RAILWAYS ACT, 1921.

PROCEEDINGS OF THE RAILWAY RATES TRIBUNAL.

THE STANDARD TERMS AND CONDITIONS OF CARRIAGE.

CONDITIONS LETTERED "A."

FRIDAY, MARCH, 23RD, 1923.

FIFTH DAY.

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PROCEEDINGS OF THE RAILWAY RATES TRIBUNAL.

FRIDAY, MARCH 23RD, 1923.

PRESENT :

W. B. CLODE, ESQ., K.C. (*President*).
W. A. JEPSON, ESQ.
GEO. C. LOCKET, ESQ., J.P.

FIFTH DAY.

MR. BRUCE THOMAS and MR. A. TYLER appeared for the Railway Companies' Association.

MR. HOLMAN GREGORY, K.C., and MR. HAROLD RUSSELL (instructed by Messrs. Willis & Willis, Agents for Mr. H. J. Taynton, Gloucester) appeared for the Association of Private Owners of Railway Rolling Stock.

MR. JACQUES ABADY (instructed by Sir Thomas R. Ratcliffe-Ellis) appeared for the Mining Association of Great Britain.

MR. JACQUES ABADY (instructed by Messrs. Vizard, Oldham, Crowders & Cash) appeared for the Traders' Co-ordinating Committee.

MR. W. E. TYLDESLEY JONES, K.C., and MR. JACQUES ABADY (instructed by Messrs. Sharpe, Pritchard & Co.) appeared for the Railway Carriage & Wagon Builders' & Financiers' Parliamentary Association.

MR. EDWIN CLEMENTS (instructed by Messrs. Neish, Howell & Haldane) appeared for the National Association of British & Irish Millers, and others.

MR. EDWIN CLEMENTS (instructed by Mr. R. Borrough Hopkins, Leeds) appeared for the National Federation of Iron & Steel Manufacturers.

MR. CHARLES DOUGHTY and MR. R. T. MONIER-WILLIAMS (instructed by Mr. George Corner) appeared for the National Federation of Fruit and Potato Trades' Association (Incorporated), Ltd.

MR. R. T. MONIER-WILLIAMS (instructed by Messrs. Monier-Williams & Milroy) appeared for the Wine & Spirit Trades' Association.

Mr. R. W BRADLEY appeared for the Manchester Chamber of Commerce and the Trafford Park Traders' Association.

MR. J. COX appeared for Messrs. Ronuk, Ltd.

Mr. Bruce Thomas: I had dealt fairly fully with this question of the general lien, and I have very little more to say, but Mr. Locket raised a question just as the Court rose last night, and as I understood it, it was this: he wanted me to consider the position of what I may call third parties in relation to any arrangements that might exist between the railway company and its customers for a general lien. That is, as I understand the point that Mr. Locket raised, and I imagine that what would have been in Mr. Locket's mind was that in the case, say, of the insolvency of a trader, then the railway company would claim, having a general lien, to come in ahead of the other creditors. I would suggest that in considering these Conditions one's consideration ought to be applied to the relationship that has to be brought about or established between the railway company and its customers, and I suggest that it is in the interests of the customers of the railway companies who either primarily or ultimately are concerned that the railway company should make as few bad debts as possible. Because some third parties may find that the railway companies have taken the precaution to obtain a prior charge, I suggest that is not a matter which requires to be considered when the Court is deciding what is a reasonable term to be imposed as between the railway company and its customers. They would, of course, in that case have a prior claim upon the goods, and that claim would be made as against a trustee in bankruptcy, as was shown in *Lord's Case*, that I referred to yesterday. I suggest that it is proper to confine our consideration of this matter to the customers of the railway and the railway companies themselves, and not the other creditors of the customer of the railway company who are concerned.

Mr. Locket: If I was wrong in raising the point, I must rely on the learned President keeping me within the bounds of order, but you suggested that you could not understand the strong opposition of the traders to the railway companies claiming a general lien, and I just threw out the suggestion—I do not know whether they are going to raise the point at all—that possibly at the back of their opposition was this feeling that the general body of the trading community were prejudiced if the railway company by relying on their general lien and not exercising their particular lien and other rights, tended to allow weak people to take long credits, and therefore prejudice other traders in the event of bankruptcy. So far as the individual himself is concerned, I cannot understand anybody having any objection to giving a railway company a general lien, because if the time came for that lien to be exercised they would be beyond hope of recovery, and it would not affect them personally at all, but I can quite understand a trader objecting very strongly to some creditor of his giving a railway company a general lien on the goods which were in the possession of the railway company at the time, because in the event of bankruptcy of that competitor of his or that customer of his the railway company would step in and probably claim the greater part of the valuable assets of that trader. You see what I mean?

Mr. Bruce Thomas: I quite appreciate it.

Mr. Locket: I wanted to hear what answer you had to that.

Mr. Bruce Thomas: I quite appreciate what you put, and just to see that I have got it quite clear, the suggestion would be that the railway company by continuing to give credit to a weak trader has allowed him to go on with his business, because they have given him that credit for a longer time than he otherwise would have been allowed to go on carrying on his business, because had the railway company pulled him up short he would have had to have stopped trading, and so by the railway company giving him a longer credit and allowing him to go on he has, so to speak, been held out to other traders

as a person who is in a stronger position than he really is.

Mr. Locket: Yes, to some extent, but, after all, the point is that the railway company acquires the status of a preferential creditor in such a case as that. I think I know what your reply would be. Your reply would be, would it not, that after all an ordinary creditor can refuse to do business with the man, and has an option in the matter. The railway company is bound to accept his traffic and to carry it, but at the same time there is that point which the traders might raise—I know nothing about it at all, but I know it has been suggested before—that the railway companies are protected by their particular lien, and if they do not exercise that they ought not to be protected further by a general lien over other goods which are not covered by a general lieu over other goods which are not covered by the particular lien.

Mr. Bruce Thomas: It may be that some such reason as you have thrown out does influence the traders in their opposition to this proposal.

Mr. Locket: I think it only right to give you an opportunity of dealing with the point.

Mr. Bruce Thomas: I am very much obliged to you.

Mr. Jepson: I wanted to make Mr. Locket's position quite clear if I could, because the suggestion contained in his remarks appeared to me to be this, that the railway company in some cases were not exercising their particular lien, and I suppose by "particular lien" he means the lien on the particular traffic that they are carrying; at the same time they might say to a man who is a little bit in difficulties: "Well, we will stop your credit, and you will have to pay cash at once, or we shall hold these particular goods until you have paid." That would be exercising the particular lien, I suppose; but instead of that they let him go on, relying more on their general lien if anything should go wrong. I do not know whether Mr. Locket suggests that that has been the policy of the company; I do not know whether you put it quite as high as that.

Mr. Locket: I should not like to put it as high as that, certainly.

Mr. Jepson: That was the impression left on my mind, because one can realise this, and one is speaking from some knowledge and experience of the past, that the policy of the railway companies, and I think it has been the right policy, and it has proved to be a right policy in many cases in my own experience, is that a trader gets into temporary difficulties; he has a ledger account with the railway company, and he appeals to the railway company not to be too harsh just at the moment, but in a month or two he will probably pull round; there is some special circumstance keeping him down. By the railway company nursing him for a little, and being a little lenient with him, they pull him round, and it is to the benefit of everybody concerned.

Mr. Bruce Thomas: I am much obliged to you, Mr. Jepson; that was the last point I had, that the railway company are frequently able to help a trader over difficult times, and if the Court thought they wished to hear any more upon this subject I could call Mr. Pike and he could tell you about it. But the way it works is this: a consignment of goods comes for a trader, and the company say: "The charges are so much," and he says: "Well, I am very sorry, I cannot pay the charges." The company says: "Well, we must hold the goods and sell them." The trader says: "Do not do that, you stop my business; you stop my livelihood. I am in difficulties at the moment. If you will let me take these goods I will have other goods coming along," and so in that way the companies are frequently able to help a trader when he is in temporary difficulties. Mr. Pike will be able to tell you—but probably that sort of thing would be within the knowledge of the Court—that it has been found of advantage to individual traders. I do not want to take up more time on this point than is really necessary, and I propose to leave it there unless the Court would like to hear anything upon the subject from Mr. Pike.

President: My colleagues have such great experience in these matters that I do not think it is necessary to call Mr. Pike at the present moment. If anything should transpire and we want him, he can be called later.

Mr. Bruce Thomas: I spoke to Mr. Pike and he was good enough to say he thought I had said everything he might have said in another way from a more practical point of view.

Mr. Jepson: There is one other point that occurs to me, and that is this, and I am again speaking from my own experience: it is a very serious thing for a railway company to give notice that they discontinue a trader's credit. He is at once injured in all the commercial world, and everybody looks askance at him at once; that is very serious indeed.

Mr. Bruce Thomas: Yes.

Mr. Jepson: It is not a thing to be taken up lightly.

Mr. Bruce Thomas: No. One knows from one's experience what the result of shutting a credit account is.

There was just one other point upon it, and it is rather a fact that I should have asked Mr. Pike to speak to, but I think it will probably be accepted from me, that although the company in many cases have not any signed ledger agreement it is quite a common thing to give credit without such an agreement, and frequently there are quite a month's charges outstanding, and it is not until the account comes to be payable that the railway company find that the trader may be in difficulties.

One other thing I might remind the Court of: if they are not given this Condition, the Court is depriving the railway companies of something that they have had for a very long time. This is not a new proposal that has been put up.

Mr. Abady: Sir, I will endeavour to deal with this difficult matter on behalf of the Traders' Co-ordinating Committee as concisely as I can, and I think perhaps I can best help the Court if I put my suggestions in two separate submissions. The first submission is, that a general lien cannot possibly arise as an incident to a contract of carriage, and the second is, that if it can arise, it is inexpedient that the condition as asked for by the railway company should be inserted in these terms and Conditions.

Mr. Bruce Thomas: Inexpedient, you say; you do not say unreasonable.

Mr. Abady: Well, I ought to have said it is unjust and unreasonable. If I can get the Court with me on the first point I need not go into the second, and I will try and put the first as shortly as I can. If you look at the heading of the matter that we are dealing with it is: "The standard terms and conditions of carriage of merchandise." My submission is that if a trader hands goods to a railway company under these conditions, whether or not there were inserted a Condition which gives the company an express right to a particular lieu, that particular lieu on those particular goods as one of the terms for the conveyance of those goods would exist, and it exists because the railway company is a bailee and is doing something of value to the goods, and in accordance with what appears to me to be the common law, the bailee would have a right to retain goods which are the subject of the bailment where something of value is to be performed to them irrespective of whether the goods belong to the person who handed the goods to the bailee, or whether they belong to anybody else. That is as I see it, and I think that is a correct statement of the law, how a particular lien arises, and, of course, it arises as part of the terms and conditions under which those particular goods are carried, but when you have exercised, or have had the option to exercise, the right of particular lien on those goods, that is the end of the rights you have with respect to a lien on those goods so

far as those rights arise under that particular contract of carriage under which the goods were placed in the hands of the railway company.

Mr. Jepson: Is that so? I can quite understand it if the question of a credit account did not come in.

Mr. Abady: Would you allow me to develop it, Mr. Jepson?

Mr. Jepson: Yes.

Mr. Abady: Supposing there is a credit account, it may be that because there is a credit account, and as an incident and a term of the agreement under which the credit account is given, the trader may have agreed that you shall have a general lien, but the general lien does not arise, in my submission, as an incident of the contract for the conveyance of the goods. It may arise as an incident of a contract that you have made under which you conduct your financial arrangements with the railway company, but that is a matter that is foreign to the conditions of carriage, and I would submit if it were necessary to take it as far as that, that that does not fall within the purview of the matters which this Court is considering, because it is not a term of the condition of carriage. The right to a general lien is not a right which is, if I may put it, *ejusdem generis* with the right of a particular lien, because a particular lien attaches to the goods, no matter whose property they are, so long as they are placed in the hands of the bailee to do something of value, and it is not pretended that a general lien can ever extend to the goods irrespective of their property. The general lien can only extend if it exists at all, to the goods of the person who has come under an agreement to give the railway company the general lien, and so the general lien arises quite incidentally, and apart and outside the contract for the condition of carriage, and cannot possibly be included in it as part of the condition. I do not know if I have made that clear?

President: You have made your argument clear to me, but I am not quite certain that I go with you to the full extent of your argument, because you seem to deal with it in the first instance as an isolated case of carriage, and it seems to me that the burden of the thing is that here you have dealings between the trader and the company existing over a long course of years.

Mr. Abady: Yes.

President: And your argument seems to go to this, that, as a matter of fact, if they did not get it in this way they could easily get it by agreement.

Mr. Abady: No, I have not come to that. What I respectfully suggest is that the right view to take of these conditions is to consider them in respect of each individual consignment.

President: Is that right? They are going to govern a course of dealing between the traders and the railway company.

Mr. Abady: They govern, if you like, a series of individual dealings, but they only govern each dealing individually.

President: Yes. But we can separate them into watertight compartments like that when there is a real continuous course of dealing?

Mr. Abady: I think so, Sir. Supposing you take Condition 1; Condition 1 deals with the name and address; so far as an individual consignment is concerned, that Condition applies to the individual consignment, and it only applies to the second consignment when that second consignment comes along to be consigned under these Conditions.

President: Oh yes, I see that.

Mr. Abady: And so it is with Condition 13. Condition 13 gives a particular lien to each consignment as it comes along. If it were sought to prove the general lien as a condition of carriage, would it not be this, that there is a consignment, and there is a particular lien which has not been exercised and money is owing; that consignment is done with and another consignment comes along; then you seek to charge that consignment with something that is arising with respect to a previous consignment. That cannot arise out of the contract for carriage of the second consignment taken as a contract with respect to the carriage of that second consignment. In that way I think I am correct in stating that in law each consignment must be considered in a watertight compartment; that is as I see it.

Mr. Jepson: Can you divorce the general practice of dealings between the railway companies and the traders from this: you may be academically perfectly correct in dealing with the individual consignment, but if one consignment goes forward and the company for some consideration do not insist upon these charges on that one particular consignment, surely the course of business with the trader thereafter must be taken into consideration; therefore, it seems to me that you cannot deal with these as particular consignments as to which, as soon as the consignment is delivered, everything is done with and forgotten. It is not so, because it has a direct bearing and a direct relationship under the circumstances I have mentioned on all consignments that follow.

Mr. Abady: I submit that it has not—not as a condition of the carriage of any individual consignment; it may be as a condition of the agreement or understanding under which the railway company give you credit; that is where the general lien can arise, but it cannot possibly arise in the same way at common law or otherwise out of a contract for the consignment of a particular article. It seems to me perfectly clear. I have been looking into the law very carefully, and it seems to me, with respect, that I have put before you a correct statement of the law. A general lien is not the same thing, or anything like the same thing, as a particular lien.

President: Does not a general lien arise, however you like to look at it, out of the dealings between traders and the people who are asking for a lien; in point of fact, does not that show that you cannot separate them into watertight compartments??

Mr. Abady: With respect, I think that shows you can, because a trader has no right to demand a credit from a railway company. If a railway company chooses of its own volition to give a trader credit——

President: Now you know really the course of dealings with the traders and it is of benefit to them; you must not put it quite like that.

Mr. Jepson: We are a business tribunal.

President: You know that the business of the country is carried on with reference to the traders by credit.

Mr. Abady: The course of business is carried on by credit with us, I know, but does credit carry with it something that is inherent to it, the right of a lien? I submit the answer is No. This is exactly the point I want to make. If the railway companies can induce a trader to put them in a preferential position compared with anybody else with whom the trader enters into credit relationship, that is a matter quite separate and distinct from the condition of carriage of goods, and ought to form no part of the condition of carriage, and, in fact, in my submission, does form no part of the condition of carriage.

President: Is the outside party who may be prejudiced put in a worse position by that, because there may be a general lien agreement of which he knows nothing, whereas if it is stated on the Conditions that the railway company have it, it is known to everybody?

Mr. Abady: I did not quite follow that, Sir.

President: I was looking at it in this way for the moment: you were saying it does not arise out of the contract of carriage; it comes in when the trader is asking for credit; that is what I understood you to say.

Mr. Abady: That is so.

President: You say that when he asks for credit, as we know he does ask for credit, and has these ledger accounts, the railway company can get by agreement a general lien; that I thought was your argument—is it?

Mr. Abady: Yes.

President: Then dealing with the prejudice that may arise to third parties, is not a third party more prejudiced by an agreement which may or may not exist than by a statement in a document like this, by which he knows the company has got a general lien?

Mr. Abady: You mean a third party whose stability of credit against the person who is charged with the lien might be affected?

President: Who might be prejudiced by the existence of it. You were dealing with the general body of creditors, and it was said that the railway company would get a preferential position.

Mr. Abady: Yes.

President: You say a general lien can be created when the trader asks for credit, and probably will be created when the trader asks for credit.

Mr. Abady: It might be.

President: That is the general course of business, is it not, according to your argument?

Mr. Abady: I do not think it follows that because a trader gets credit therefore the railway company get a general lien.

President: I do not put it as high as that.

Mr. Abady: I have a case here which shows that a general lien is something which is inconsistent with an agreement for credit.

President: It looks an old book; I do not know whether it is.

Mr. Abady: It is an old book.

President: Is it Espinasse?

Mr. Abady: No, it is 4 Campbell; it is the case of *Raitt v. Mitchell*.

President: What is the date of it?

Mr. Abady: 1815; it is on page 146, and I brought it here because it is an authority that where there is a stipulation for a definite credit there is no general lien; the two things are inconsistent.

President: Yes. I do not say it follows because he asks for credit, but I say the railway company asks for it and gets it.

Mr. Abady: Well, Sir, I have made the submission, and I hope I have made it clearly; whether I have carried you with me or not I do not know, but I have made the submission on the first point.

Now I have to deal with the general question as to whether it is expedient, and whether it is just and reasonable that there should be inserted in a condition of carriage a general lien in this form or any other form. I think it will be admitted to begin with that it only arises when there is a credit, generally when there is a ledger account. It was put by Mr. Bruce Thomas that the ledger account was given as a convenience to the trader. If it is necessary I will call evidence on that; I wanted to call General Long last night, but I do not want to labour under any sense of grievance, because he was not able to be called or anything of that kind; I am sure you will take from me what he was going to say, and I will call another Witness to say that a ledger account is opened as much for the convenience of the railway company in many cases as it is for the convenience of the trader.

President: Do you mean in regard to collecting; it reduces the clerkage?

Mr. Abady: Yes. It is a matter for mutual convenience. If it is a matter for mutual convenience, it then assumes the character of an ordinary credit arrangement between one firm and another, and having regard to the fact that the law leans against the extension of the principle of a general lien, is there any reason which has arisen from anything that Mr. Thomas has addressed to you or any of the circumstances which are in your knowledge why a railway company should be treated differentially and preferentially to anybody else who opens a credit account with a trader.

President: That they have to accept the goods for carriage, that is what was suggested.

Mr. Abady: It is a little difficult to follow with respect to what goods the lien attaches. I was hoping to have had some explanation from a railway witness as to what goods it attaches to. Supposing we take Lever Brothers. I believe they have a ledger account. They are sending a lot of goods away. They may be sending them carriage paid and getting credit for the carriage. Is it suggested that the general lien in that case should attach to the goods which Lever Brothers hand to the railway company in respect of the account which they owe, because if it is, it is attaching to goods which are not necessarily and probably are not the property of Messrs. Lever's when they are handed to the railway company. If that is the assumption, then the general lien on account of something that Lever Brothers owe to the railway company by agreement is attaching to goods which are not Lever Brothers' goods.

Mr. Jepson: Is not the answer to that, that if the general lien would not apply to such goods, then those goods are not subject to the general lien?

Mr. Abady: I am trying to explore what the difficulty is that the railway has and how the general lien solves it, and I am trying to take the case of a ledger account and see what it applies to.

Mr. Jepson: I suppose you would agree, of course, that generally it can apply where the railway company has given credit to a trader; it could not apply in other cases.

Mr. Abady: No.

Mr. Jepson: It must assume that credit of some sort has been given.

Mr. Abady: That is so.

Mr. Jepson: Whether payments on a ledger account or a weekly account or otherwise.

Mr Abady: That is so; that is why I suggested that it did not arise out of the contract of carriage.

Mr. Jepson: Well, you say, and of course it would be generally admitted that a system of credit is a reasonable course of business between the railway companies and the traders, but do you put it as high as this, that so far as risk of losing money is concerned, their position is the same.

Mr. Abady: I think the risk is considerably less.

Mr. Jepson: You say that the risk is considerably less from the point of view of the railway company than from the trader?

Mr. Abady: The railway company, if it engages in credit operations, stands considerably less risk of losing the money than a trader both as to quantum and as to the remedies that are open to the railway company or debtor trader respectively.

Mr. Jepson: I am sorry I do not follow that, because if it was practicable for the railway company to collect money on every consignment before it parted with possession of it, there would be no loss at all, but the railway company by giving credit do stand out of their money for a month or more, and during that period there is the risk of their losing all or some of it in the event of failure or insolvency, or anything of that sort.

Mr. Abady: That is exactly the same risk to the seller of the goods.

Mr. Jepson: The trader, as far the railway carriage is concerned, it not in that position at all; he is quite safe; he is in a watertight safe compartment. He has nothing to lose by the credit account; he has everything to gain.

Mr. Abady: But the person who sells the goods——

Mr. Jepson: I am not talking about the person who sells the goods. I am talking now as between the railway company and the trader, and their relation in respect of the business of transport.

Mr. Abady: Does not the same thing arise between a buyer and a seller? If I have goods and I sell them to you, and I give you credit, you are perfectly safe because you have got the goods, but I am not safe at all, because I have parted with them and I have got nothing except the expectation of receiving money from you, that is in respect of the value of the whole of the goods. If you take any particular consignment, the amount of carriage would represent only a very small percentage of the value of those goods, and it is only in respect of that very small percentage that the railway company is risking anything.

Mr. Jepson: Quite right, but still it is a risk which they need not run, but it is a risk which is taken as conducive to economy in dealing with the goods.

Mr. Abady: I do not know what the reasons are. I am suggesting that whatever the reasons are, they do not arise as a condition of the contract of carriage of each particular consignment.

Mr. Jepson: That is where we differ.

Mr. Abady: Well, I hope you will not when you have considered it. Now if we go on with my hypothetical case of Lever Brothers, if the goods are carriage paid and if the account arises out of the carriage which should be carriage paid, but which for convenience is settled at intervals, the goods that leave Lever's cannot possibly be seized; if, on the other hand, the credit arises with respect to carriage owed by a firm for goods sent in to them carriage forward, what goods is it that the railway company are going to seize in order to satisfy that lien?

President: You are making out now that it is not a very effective lien if they get it.

Mr. Abady: I think so. One would have liked to have seen a railway witness and have seen what the difficulty really is.

President: You can see a railway witness if you really want to, you know.

Mr. Abady: I do not want to if it will not be of service to you.

President: Mr. Pike will go into the box and tell his view.

Mr. Abady: I do not want to if it will not be of service to you.

President: If you think you can establish something which will be of value to the Court out of Mr. Pike's evidence, I should ask Mr. Bruce Thomas to be kind enough to call him; that would be right, would it not, Mr. Bruce Thomas? Mr. Abady has said in argument that he would have liked to have had a witness in the box from the railway company, so that he could explore this and that evidence; I do not think you would like to deprive him of the opportunity.

Mr. Bruce Thomas: No; I should be only too pleased to call Mr. Pike.

President: That is what I thought.

Mr. Jepson: I think you would have put him in the box if the President had not referred the matter to Mr. Locket and myself as to whether we wanted any evidence of the sort.

Mr. Bruce Thomas: Certainly, and if when I was tendering him Mr. Abady had suggested he wanted to cross-examine him, I should certainly have called him.

Mr. Jepson: I would not like it to rest upon this, that Mr. Pike was not put into the box at your suggestion acquiesced in by the Court, and then Mr. Abady felt a grievance because he had not been able to cross-examine.

Mr. Abady: I do not want to take it any further than that.

Mr. Bruce Thomas: He really would not feel a grievance.

Mr. Abady: I am only trying to see what the real nature of this remedy is. I want to bring it home, and I think I am correct in putting this to the Court, that the general lien can only arise with respect to goods in the hands of the railway company which are the property of the person who owes the money. I think my friend will agree that that is as far as it can go. A general lien can only apply to goods which are in the hands of the railway company which in fact are the property of the person who owes the money.

Mr. Bruce Thomas: Certainly. I may say that I have had experience of exercising a lien upon goods which subsequently turned out not to be the goods of the man who owed the money, and it cost my clients very dearly.

President: Now that satisfies you up to that point.

Mr. Abady: That gets that point out of the way, yes. That obviously, as I put it, arises out of the fact that the railway company and the trader have entered into a credit agreement, as I submit, for their mutual convenience. That is only a matter of degree. If it is for the convenience solely of the trader that would be a stronger point in favour of the railway company. If it is merely convenience that would be less reason why they should get the lien or any preferential remedy at all, but when you examine what the position is of a railway company who does carry and when you consider the various remedies they have, they first of all have a particular lien on each consignment, and it does not matter whether the consignment belongs to either party, the consignor or the consignee, they have a particular lien for the carriage. The question of property does not matter in that case. That is a valuable safeguard if I may suggest that. Secondly, with respect to their charges for the carriage they have recourse for those charges, quite apart from the exercise of their general lien against the consignee or the consignor. That again is something which I suggest gives them an extra safeguard. If you compare that with the position of one trader who is selling goods to another trader on credit, and I again suggest that this matter only arises when the railway company do, of their own volition, give credit—if you compare a railway company's position in those three respects, the particular lien, the recourse to either party of the contract for carriage, they are in a very much stronger and more protected position than a trader who gives credit for his goods, and I am trying to look at it and put it to you from the point of view of the general business convenience of the trading community. What I submit is a matter of very great inconvenience to the business community is that any particular class of trader should be given a right which is preferential over the rights of other traders that are trading on credit, and my submission is that that is such a highly inconvenient course that it should not be continued.

Mr. Locket: That is quite fair if the matter were left to the question of the contract or ledger account. It is some time since I studied the conditions attaching to a ledger account, but I think it is a condition that the goods carried under that contract should be subject to a general lien, but the conditions of a contract of that sort are liable to be waived in certain individual cases. One of the conditions in those contracts, I think, is that the account should be paid monthly.

Mr. Abady: You mean the ledger agreement?

Mr. Locket: The ledger account contracts; they are in a stereotyped form, and one of the conditions is that the account should be paid monthly. It came out a good many years go in a case before the Railway & Canal Commission that in a certain instance a particular railway company had been giving another trader three months' credit, and the result of that was that a great many other traders who were competitors claimed the same right. The clauses that are in these contracts are liable to be waived in that way.

Mr. Abady: Yes.

Mr. Locket: If you base your argument on all traders being treated alike, the only way in which they really effectively can be treated alike is by the condition being put into these Conditions that we are considering now, which are to be statutory; you see the point I am making?

Mr. Abady: Yes; preferential treatment.

Mr. Locket: Yes Your argument now is rather going against the argument that you were raising just before.

Mr. Abady: No. What I have been trying to say is that these Conditions apply to carriage, and the question of credit does not necessarily arise in connection with the carriage at all. If the credit arises it is in connection with the other agreement, and if we were considering what should be the standard terms which should be inserted in ledger agreements where credit is given, that is quite another thing, but we are going to put it into Conditions of carriage which really, in my most earnest and serious submission, must be looked at from the point of view of each individual consignment. If we are going to do that we

are putting something in which does not appertain necessarily to that consignment at all, and does not give the railway company a remedy with respect to the particular consignment to which the consignment note in which these Conditions are embodied relates. It may do to another consignment, but then that gives them the remedy, because they carried some goods before. I quite see your point about preferential treatment, but I submit that is a point that is quite alien to the matter we are considering. Whether one trader may possibly have a grievance under the prohibition against preferential treatment because credit in one form is given to a trader, and withheld from another, is a matter for consideration elsewhere, and quite apart from what we are considering now. What we are considering are the Conditions under which goods are carried and not the conditions under which credit shall be given for goods which have been carried. That is the point I want to make, and it seems to me that the effect of putting this Condition in would be to extend the area over which general liens operate. May I just read from the Laws of England which state the law better than I can?

President: Is it a sort of general statement.

Mr. Abady: Yes.

President: That the law leans against general liens, or something of that sort?

Mr. Abady: That is so, and there is a reference to a case which I think my learned friend referred to, also out of an old book, *Rushforth* v. *Hadfield*; that is a case in 1805.

President: That is reported in East, is it not?

Mr. Abady: Yes.

President: I mean, it is old.

Mr. Abady: Yes. If the dictum there is within your knowledge I will not read it.

President: Yes, read it.

Mr. Abady: "General liens are a great inconvenience to the bulk of the generality of traders, because they give a particular advantage to certain individuals who claim to themselves a special privilege against the body of creditors at large instead of coming in with them for an equal share of the insolvent estate. All these general liens infringe on the system of bankrupt laws, the object of which is to distribute the debtor's estate proportionately among all the creditors, and that ought not to be encouraged." That is what was stated by Mr. Justice Le Blanc at page 519 in 6 East, and it was also stated by Lord Ellenborough in the same case, that "growing liens are an encroachment upon the common law," and I think you may take it that it is a generally undesirable thing that general liens should be extended beyond the sphere in which they operate. I think my friend said that a general lien was part of a condition of a Bill of Lading, but is not that quite a different thing? Is not that a matter which is a matter of separate and individual contract between each set of individuals as they become bound by the particular Bill of Lading?—What we are doing now is not to settle the terms of a consignment note which it may be open to any trader to sign or not, but as we are laying down, as it seems to me, by clauses, which will have the effect of an Act of Parliament, that wherever a railway company carries goods, wherever under those circumstances a railway company chooses to give credit for the carriage of those goods—never mind the circumstances under which they give their credit—they shall as an adherent part of that credit have the right to exercise a general lien over the goods of the person to whom they give the credit.

President: If you found it was a standard condition, so to speak, in a Bill of Lading, would not the argument go to show that it might be a standard condition for the carriage of goods on land?

Mr. Abady: I think there is a difference, because the Bill of Lading would only bind the parties who are, in fact, bound by it, but this binds everybody automatically, that is the distinction. I may be a little inconsistent.

President: Oh no, but it seemed to me at first blush that if you found it a standard condition in a Bill of Lading it was rather a step in the direction of its being a standard Condition in the matter of land carriage.

Mr. Abady: I do not know much about Bills of Lading, and I do not pretend to; I have not looked at the matter so I do not know.

Mr. Locket: Is not the position this, that the standard Bills of Lading have been drawn up by Joint Committees of all the parties concerned and accepted as binding for everybody; I am not quite certain, but I have that impression?

Mr. Abady: They may, or may not, but they have not the force of an Act of Parliament as these Conditions would have.

President: No. Mr. Locket suggests that there has been a Co-ordinating Committee at work also with regard to Bills of Lading which has come to the conclusion that it is a good standard condition.

Mr. Abady: Assuming that the general lien is one of the standard conditions of the Bill of Lading, and it has been drawn up by a Committee of all parties who have agreed to it, the fact that the Co-ordinating Committee do not agree to it is a good argument why the Bill of Lading should not form a precedent, because if that has been incorporated in the standard conditions it has been by agreement between the parties; if this is incorporated as a part of what I submit is an Act of Parliament, it will not be by agreement.

Mr. Locket: I do not know whether you can produce a standard Bill of Lading, Mr. Bruce Thomas; I cannot trust my memory?

Mr. Bruce Thomas: I was just asked a moment ago if a bundle should be sent for, and I foolishly said I did not think there would be any question about it; I can quite shortly get a bundle.

Mr. Locket: My impression is that what you said is quite right, that it is in the standard Bill of Lading.

Mr. Abady: I am under the impression that it is a conditiou.

Mr. Locket: I am also pretty confident that these standard Bills of Lading were drawn up by joint conference of shipowners, shippers, brokers, and everybody concerned.

Mr. Abady: I think that is so.

Mr. Locket: If that is so, may it not be rather assumed that so far as sea carriage is concerned it is the general opinion that a general lien is not unjust or unreasonable?

Mr. Abady: Well, it has been agreed to by the parties who sent their goods by sea; it is by agreement.

Mr. Locket: Yes.

Mr. Abady: There is a statement in the Laws of England that such a general lien has been established in the case of solicitors, bankers, factors, stockbrokers, warehouse-keepers and insurance brokers.

President: That is established by usage, is it not?

Mr. Abady: Yes, I think so. Then there is another question to which Mr. Bruce Thomas alluded, that is, the question of Section 97; and it is a matter for the Court to consider whether Section 97 of the Act of 1845 does give to the railway companies all the protection to which they are entitled. Of course, this Section was operative when the question whether there was a general lieu was considered in the *United States Steel Products* case. Mr. Bruce Thomas read certain passages from that case, but I do not know whether he read the part of the speech of Lord Buckmaster in which he said that there was no general lieu. That was when he must have had in his mind that there was Section 97. Although I am putting this forward, I am bound to say frankly that it does not impress me very much. If there is a general lien there is no reason why it should not be repeated in the note; if there is not a general lieu there is no reason why it should be in. I do not think I can with honesty take up much time about it, but I want to draw attention to it because Mr. Bruce Thomas mentioned it. But what I suggest is that there has been no evideuce before the Court, even assuming I am wrong in my contention that a general lien does

not arise as to the carriage of particular goods, to lead the Court to the conclusion that the inconveniences arising from the absence of a general lien are so great as to justify them making it a custom in a particular case of contract where I submit it is not now customary.

Mr. Jepson: Is it not the other way about; because this general lien has been in force for so many years now, although it is in few cases comparatively that it is put into force by reason of circumstances? But is it not rather for you to show that there is an actual grievance in some cases? I suppose you are going to produce evidence to show it is acting harshly on some particular trader. It seems to me that the onus is upon you and not upon the railway companies, because a general lien has been in operation for so many years.

Mr. Abady: I admit there have been a good many ledger agreements, and that in a large number of these ledger agreements it has been inserted. Whether it would be operative in a court of law I do not know. I also know there are other ledger agreements where the people who have the benefit of them have refused to sign the agreement with the general lien condition in it.

President: General Long was one of those.

Mr. Abady: Yes; and I was going to call Mr. Oldham, who would also give his reasons. I think it would help the Court if, in the circumstances, I called Mr. Oldham, and he could let you know, from the point of view of those whom he represents, what the objection is.

Mr. Bruce Thomas: Mr. Oldham is the Vacuum Oil Company, which is Mr. Rockefeller; and General Long is Lord Leverhulme.

Mr. Abady: I think, at any rate, we could give you some information about the bills of lading. I do not think the impression you have that there is a general lien on the goods other than those in the hands of the shipper——

President: What we want is a standard bill of lading, if you have one.

Mr. Escritt: I have not a standard bill of lading, but I can give you some evidence about them.

Mr. WILLIAM ESCRITT, recalled.

Examined by Mr. ABADY.

894. I think you have given evidence before in these Proceedings. Are you acquainted with the contents and of what the Conditions are which are endorsed on a bill of lading?—They are not endorsed. There are the terms of a general lien printed on the bill of lading; but those are never acted upon, nor could they be.

895. Why not?—Because the bill of lading passes from the shipper of the goods usually to a bank against payment, by bills of exchange of exchange or something of that kind; the merchant on this side takes up the bill of lading, and he can obtain delivery of his goods from the ship; and the ship is only in a position to demand freights and charges on that particular consignment. He cannot with-hold delivery for any other charges for any previous shipment that may be owing.

896. Then people to whom the freight is owing have not a general lien on the goods?—They have only a lien for the particular charge on those particular goods.

897. That is a particular lieu is it not?—Yes. The bill of lading is practically a particular lien. I am signing cheques for cargoes and parcels every day of my life.

898. The question of any amount owing on the credit account does not arise in the circumstances about which you have given evidence?—No.

899. *Mr. Jepson*: What is the object of the general lien in the standard bill of lading?—I have often wondered.

900. This is agreed, we have been told, by some co-ordinating committee of the shippers, brokers, bankers, and traders. Does it mean nothing? I understood it was definitely agreed between everyone interested?—It means practically nothing. I take up a set of documents which entitles me to the delivery of that cargo, of, say, wheat; I have paid the bank for the wheat, or whoever holds the documents; and so long as I pay the charges which are payable under those documents, which is the freight stated, no one can with-hold delivery from me. I may pass those documents on again against payment; but the ship has no claim against the ultimate receiver nor for any other charges than the freight set out in those documents.

901. *Mr. Abady*: Would you look at that document and then hand it in. (*Document handed.*) Perhaps you will read what it says on the front?—"Proposed British legislation for the carriage goods by sea as recommended by the Imperial Shipping Committee."

902. On the third page you find a title in black which has been altered to red, do you not?—Yes, "Rules for the carriage of goods by sea."

903. *President*: What is the date of that document?—1st of June, 1922.

904. *Mr. Abady*: Perhaps I might read it: "Proposed British legislation for the carriage of goods by sea is recommended by the Imperial Shipping Committee." Then there is a statement signed by P. Maurice Hill, Acting General Manager. It sets out that, "It will be remembered that the Imperial Shipping Comittee reported last year in favour of uniform legislation throughout the British Empire governing the carriage of goods by sea." Then it states that Mr. Hipwood, an Asistant Secretary of a Department of the Board of Trade, invited Sir Norman Hill and other persons to meet him in informal conference to discuss the form of a Bill to be introduced by the Government to give effect to the Report of that Committee. Then Mr. Hipwood explained to the Committee that the Government were under a pledge to the Dominions to pass a Bill to carry into effect the recommendations of the Imperial Shipping Comittee, and such a Bill was drafted; that, as drafted, the Bill was framed on the lines of the Canadian Act, but the Board of Trade realised the advantages offered by a self-contained code, and especially of a code in a form likely to prove acceptable to all nations. There is a good deal more, but you will have this document, Sir. It says at the end: "Admitteedly the Rules may be open to criticism by some shipowners, but as they now stand they represent the best arrangement which in the circumstances could be secured." Then the body of the document had as a heading "Hague Rules, 1921," and for that has been substituted, "Rules for the carriage of goods by sea." Then it is divided into Definitions, Risks, Responsibilities and Liabilities, Rights and Immunities, and so on. The document generally is in black print, but emendations have been made by crossing out the black print and substituting red print. I do not see anything in that document from beginning to end which relates to the general lien. Whether the matter of lien was one of the questions considered, I do not know. But, so far as Mr. Escritt's explanation goes, it would appear there is a general lien in custom. (*To the witness*): I will draw a bow at venture, and I do not know what the result will be. Has your firm a ledger account, with the railway companies?—With some we have a ledger account, but with others it is only a credit account; because we object to sign their agreements. But they give us credit for their own convenience as well as our own.

905. Have you signed the agreement?—Yes, we signed years ago, but we have not for some years past.

906. You have had an account without signing the agreement?—That is so.

907. What is your objection to signing?—My objection has always been to signing away our rights

at law because we have a facility given to us which is equally to the advantage of the railway company as to ourselves. The railway company always say to us: "We do not see why you object to signing this; it does not apply to you; we should never put it into practice with you; it is only to protect us against people who are not like you." Then we say: "Very well, then, do not put it in our agreements."

908. From the point of view of its effectiveness, what goods would the railway companies exercise the lien over?—They would have extreme difficulty in proving the ownership in some cases.

909. Would the lien arise with respect to goods on which you owed the carriage because you have despatched them carriage paid?—Would you mind putting that again?

910. Would the items in the account which you owe on credit be items of carriage which you pay on goods which you have sent away from your works. Supposing you sent a bag of flour to me carriage paid, would the railway company charge you up in the account the carriage on that consignment? Yes.

911. Supposing I am sending to you a bundle of law books and you pay a carriage on those, or ought to, they would charge that up in the account?—Yes.

912. Have you ever discussed the matter with the railway company, or have you had any experience, as to what goods in fact would be attached under a general lien?—The goods that were on the railway at the time that they wanted to exercise their general lien, I suppose.

913. Goods sent away by you?—Yes.

914. But those would not belong to you in 9 cases out of 10?—In law they would belong to the consignee.

915. Under the Sale of Goods Act?—Yes. In that case of a farmer sending wheat to us, the wheat would belong to us as soon as it was on the rail.

916. So that they could seize goods on the way to you?—Yes.

Mr. Bruce Thomas: It is not so.

Mr. Jepson: If it were carried carriage forward, would they?

President: To discuss the cases with the witness cannot really be very conclusive, Mr. Abady.

Mr. Jepson: If the general lien does not apply to those goods it does not apply, and, therefore, those goods are not subject to the general lien.

Mr. Abady: I want to see what the effect of it is with this put in a Condition which seems to apply to all goods whenever they are consigned.

Mr. Jepson: I think the evidence given by the witness rather strengthens the view that these Conditions ought to contain it; because he says that in some cases he has not signed the agreement which gives a general lien, but in other cases he has signed the agreement with the general lien. There is a difference in treatment there between big traders and smaller traders, and a difference in his case as regards one railway which gives him credit and another railway which gives him credit.

Mr. Abady: I think what he said is subject to this qualification; he said they signed some agreements years ago but of later years they have refused to do so.

Mr. Jepson: This is not a perennial thing which comes up every year for signature; it lasts as long as the credit account lasts.

Witness: It would be incorrect for me to say that we have never signed. We have seriously thought of cancelling our agreements that were signed 25 or 30 years ago.

917. But, still, they are operative to-day as regards those companies who hold them?—Yes; before we were such a universal firm as we have become to-day.

918. Take the London and North Western or the Great Eastern. You have signed with those companies, and those agreements which you signed are presumably the basis on which you have the credit account to-day?—Yes.

919. To other companies that have come in more recently you have said: "No, we will not sign; if you like to give us credit in order to compete for our business you can have it; but we will not sign the ledger agreement"?—I do not think the general lien was in the original ledger account agreements—the very old ones.

920. I am not quite sure?—I think some of the agreements we have signed have not the general lien in; but the railway companies insert a general lien condition in everyone they put before you. If you take a hut at 8s. a month they want a general lien on the whole of your goods—for anything. It has nothing to at all to do with it, but they put it in; and we refused and got the agreemens with that deleted.

921. *Mr. Lockett*: Have you refused to sign the agreements solely because they contained a clause with regard to the general lien, or because you were dissatisfied with other clauses as well. Assuming the rest of the agreement had been entirely satisfactory to you, would you have refused to sign because it contained the general lien?—Yes, I think I should refuse to sign away my rights at common law just because of a facility.

922. What reason have you for objecting, beyond a sentimental reason?—The railway companies tell us that this clause is put in the agreements to protect them against undesirable people. Why should they bind me by such a clause?

923. Then it is a sentimental objection?—Yes, to a great extent.

924. Do not you think we should require something more than a sentimental objection to lead us to upset a condition which has been attached for so many years?—I can imagine how this general lien would act very harshly against certain traders.

925. I want to get some instances where it has acted harshly. It could not possibly operate harshly in your case?—Take a smaller trader trading in very great difficulties, the railway company could practically stop his business. Say he is getting delivery, perhaps, from his merchant for cash and for payment of carriage on that particular lot of stuff; the railway company can come along and seize his goods and hinder him carrying on his business because he owes them a few pounds for something which has gone before. It is very harsh on the small trader.

926. Do you know of any such case?—When I was in railway work I knew cases where it would have been very hard if you could have exercised it.

927. I think the complaint has generally been in the past that the railway companies had acted too leniently to the weak trader and consequently let in people for debts which they otherwise would not have incurred?—I do not know of those cases. I do not think railway companies are lenient as a rule with traders.

928. I think it is very desirable we should have some instances before us where it has operated harshly?—It does not effect us as a firm——

929. Except indirectly?—I do remember cases when I was a railway man where it would have acted very harshly indeed if we had stopped delivery of goods to certain traders because they had carriage accounts which were unpaid. They could stop a man's business.

930. *Mr. Jepson*: And you did not do it?—My instructions in those days were that I must on no account stop delivery if I got no payment because it was allegal.

931. You would agree with what I said just now, that it is a very serious thing for a railway company to stop a trader's credit?—Yes. I think it is; it is very hard on the poor trader.

932. But it puts him in a hole with all his creditors at once because it comes out at once that the railway company will no longer trust him; that goes round to everyone and at once he is on the black list?—I should not attach vital importance to that. I should judge a man from what I know of him.

933. *Mr. Abady*: Let me draw another bow at venture. You as a seller have the right to stop goods in transit, have you not, if they are unpaid for?—Yes, we do; but I do not think we have any legal right. We indemnify the railway company.

President: This is worse than the Condition.

Mr. Abady: I do not think so. But, as a matter of fact, he has a legal right.

Witness: I always thought not. The railway companies ask you to indemnify them if they do stop delivery.

Mr. Abady: I was going to ask whether he had considered the general lien in its bearing on the right of stoppage in transit; he did not know he had the right, and it would not be fair to suggest anything to his mind.

Mr. Bruce Thomas: That House of Lords case deals with that—right of stoppage overrides the general lien.

Mr. Abady: Not necessarily: "Such a lien apart from contract cannot affect the right of the consignor." It was one of the submissions I was going to make, the consequence of making this was to give the railway company a lien which would defeat the right of the unpaid consignor.

Mr. Bruce Thomas: Such a lien cannot affect the consignor's right of stoppage in transit unless you have a contract that you shall. I do not want to ask the witness any questions.

(*The Witness withdrew.*)

Mr. Abady: That was another point. I am trying to put the contentions clearly before the Court. In the *United States Steel Products Company* case this question of the relative rights of a person under a lien, and the right of an unpaid seller to stop goods in transit, was referred to in Lord Buckmaster's speech, when he was the Lord Chancellor. It will be found on pages 195 and 196 of that case. Lord Buckmaster said this: "Before more closely examining the terms of the contract of March 10th under which the Respondents claim this, I think it desirable to state how the law stands in relation to the rival claims of unpaid vendors and carriers of goods. Apart from any express contract it is clear that a carrier of goods whether by land or sea has a lien on the goods for their freight. But this right which arises from the common law is confined to the carrier's charges payable on the carriage of the particular goods. Such a lien prevails against the rights of the vendors as well as those of the consignees." Stopping there for a moment, does not that help me in my argument when I say that the insertion of a clause as to a particular lien is quite proper in the conditions of carriage because it is a right which arises from the contract of carriage? It helps me in that sense, and it also helps me in this way: That that right carries with it automatically priority over the unpaid sellers—right of stoppage in transit. If, as I think Mr. Locket suggested, there might be a reason for putting in a general lien so as to give notice, that notice might be misleading, because anyone reading that the carrier had a particular lien and general lien might think that the effect of the general lien was the same as the effect of the particular lien with respect to the unpaid seller's right of stoppage in transit; whereas I suggest it is something quite different; and I repeat with respect that it is different because it does not arise out of the contract of carriage but out of something which is extraneous to it. May I now go back to Lord Buckmaster's judgment? He continues: "On the other hand, a general lien, that is, a right to retain the goods for other freights due upon every transaction, can only arise by express contract or through general usage, and such a lien apart from contract cannot affect the right of the consignor." That is what I am endeavouring to say to the Court, that it can only arise from special contract.

Mr. Jepson: Or general usage?

Mr. Abady: Yes. But it does not arise because it is part of a condition of a contract. The only reason I submit that a lien is in a contract for carriage is because the carrier happens to be a bailee, and it is part of the common law that a bailee must have a lieu against anyone's goods which come into his hands to do something for value. I have put my submission on that.

There is one final submission I want to make. If you think it is just and reasonable—first of all, that the general lien can properly be inserted in the Condition, and if you think that it is just and reasonable if it is possible that a general lien should be inserted, then is it expedient that the general lien should extend to anything more than the charges which arise out of the contract of carriage of which this will be a condition? If Condition 12 had stood with the words in block type remaining as part of the Condition, then this contract would have related to charges other than the charges for carriage, as those are out, and not a general lien, if there be a general lien at all, only to relate exclusively to the charges to which this contract relates. If you think otherwise, would not the effect be to give as a condition of a contract of carriage a right to a lien out of something which does not arise out of the contract of carriage at all? If he had the right under this contract to make a charge for detention of trucks, and so on, which you have decided he has not—

Mr. Bruce Thomas: No, the Court has not decided that.

Mr. Jepson: As I read this general lien, notwithstanding those words in black have been knocked out of Condition 12, the general lien of the company would equally apply to any amounts outstanding for demurrage or siding rent or any of those charges which the railway company sought to put in Condition 12 and recover from the sender. I do not think it makes any difference at all as to the application of this general lien whether those words were in Condition 12 or out of Condition 12.

Mr. Abady: I submit it does; because if he recovers it from anyone he does not recover it under this contract of carriage but because he is authorised to make a charge for the service rendered at the request or for the convenience of someone, then this Condition 13 would enable him to attach goods which were merely sent for carriage. I am hoping that you will take, when you have considered all the arguments, the trader's point of view—first of all, that the proper place for a general lien is not a condition of carriage because it does not arise; secondly, that there is no just cause shown why it is reasonable that it should be inserted. I do not think I can take the matter any further.

Mr. Clements: There are only two points I should like to refer to. The first relates to the statement that my friend Mr. Bruce Thomas made—I think I have it down accurately—that the railway companies have now a general lien, and that they have by agreement. Is that right?

Mr. Bruce Thomas: Yes, that is right.

Mr. Clements: The agreement being presumably the terms of the ledger agreement, or, where there is no such agreement, the terms of the consignment note. I think that is what it must come to. I do not think I need deal with the cases where a lien, if there is one, is given by means of an agreement for a ledger account; but I would rather draw your attention to the cases, which I think must be very numerous, where no such agreement exists. That being so, if the trader agrees to give a general lien, he does it by subscribing to the terms of the consignment note. What I was going to submit to the Court was this, that in such cases the two parties are hardly on equal terms. There must be many cases where a trader desiring to send goods to a particular spot can do only by railway; and one wonders

what would happen if, when he tendered his goods and was required to agree to this general lien, he refused to do so. I should think that in the majority of cases he would have no choice in the matter. He would desire to send his goods and he would desire that they should be sent as expeditiously as possible; and the only means by which he could accomplish that desire would be by accepting the terms of the consignment note containing a provision as to general lien. I think the case is not on the same footing as that of carriage by sea, because I imagine it is within the power of anyone who possesses the necessary capital to build ships and to send them wherever he chooses. Here where you are dealing with inland carriage, and, perhaps, more particularly inland carriage to places at a considerable distance from the sending point, the trader—I think it is not putting it too strongly—is without any other means. He must either agree to the terms or his goods remain where they are. I think that is the very important distinction between the two cases.

President: He can build his own ship, but he cannot build his own railway.

Mr. Clements: That is so. Nor can anyone build a railway, as you, Sir, know very well, without an Act of Parliament, and without going through a very strenuous proceeding. So that in the case of the ship I was imagining that if there were a standard bill of lading—and I do not understand whether that is decided to be the case or not—but if there were any case where the capitalist did not agree with the terms of that bill of lading and could not get the goods carried on any other terms by the existing shipowners, it would be quite within his power, if the occasion were large enough to warrant it, to build his own ship and use it for the carriage of his own goods.

Mr. Jepson: Are you correct in saying that a consignee or would-be sender has no alternative? I agree that he would be asked to sign a consignment note including this general lien. If he pays the carriage straightaway down there is no question of the operation of the general lien now because there is no debt owed to the company for which the general lien could be put into operation.

Mr. Clements: But might there not very well be so?

Mr. Jepson: Not unless he has credit.

Mr. Clements: I can imagine the case of trader A sending goods carriage forward; the consignee obtains possession of the goods without payment, and I think you will agree that that is not impossible.

Mr. Jepson: It is not practicable, or it is not generally the case, unless he had a ledger account or some credit account.

Mr. Clements: I think I could find instances where it has happened.

Mr. Jepson: You may find an odd instance, but we are speaking generally. Generally if a person is offered goods by the railway company he has got to pay the carriage; he has to pay what is due, unless he has a ledger account, or something of the kind. Generally a man cannot take the goods away and say, "I will pay you to-morrow, or next week."

Mr. Clements: I agree. But I am taking a case where it might happen.

Mr. Jepson: Are you going to base the whole thing on a case where it might happen?

Mr. Clements: I do not think it is right wholly to dismiss such cases without reason, for a reason I will submit directly. Such cases, I submit, have happened, and they might happen again; and in such a case as that, if the consignee, having obtained possession of the goods, refused to pay, the railway company under the consignment note would, or could, lay their hands upon other goods of the consignor which might happen to be in their possession.

The concluding point I was going to make upon that, and, I think, answering Mr. Jepson, was this: That whether there is or is not force in the submission I have made to you, if you put this provision into these Conditions that will be held to be just and reasonable and there is no appeal against it. It is the same position as that to which I myself referred to with regard to Condition 8. And such rights as a trader may have to-day of contesting this Condition where it is contained in the consignment note or a ledger account would be gone altogether. That is a position which I respectfully suggest should be carefully considered by the Tribunal. The only other point upon which I shall trouble you, and it is quite a short one, is this: I think my friend Mr. Bruce Thomas claimed that the railway companies had something in the nature of a statutory lien under the Railways Clauses Act, Section 97——

Mr. Bruce Thomas: I said the contrary had been decided, I think.

Mr. Clements: I am sorry if I have made a mistake.

Mr. Bruce Thomas: I merely pointed out that a good many doubts had been expressed on the correctness of that decision, although the position might be different after the appointed day.

Mr. Clements: I am obliged to my friend for that. I must have misunderstood him. I was going to refer to these facts, but I think you drew attention to the amendment of Section 3 of that Act—the definition clause—and I thought you founded something upon that.

Mr. Bruce Thomas: I did suggest that after the appointed day it might well be that the effect of the amendment would be to do away with the contrary decision in *Wallis and the South-Western Railway*. That is what I suggested.

Mr. Clements: That is the point I was going to deal with. My submission is that it would not do away with it. You will find that the interpretation of the word "toll" has been given differently under different Sections of the Railways Clauses Act, and importing "rates which may be fixed by the Rates Tribunal" in the definition makes the definition apply to those rates in cases where the word "toll" has been held to apply to rates and in no other cases. That is all I need trouble you with, Sir.

President: Does anyone else wish to address us on Condition 13?

Mr. Bruce Thomas: I have not got the bills of lading here, and I do not want to rely too much upon whether or not steamships have got them generally—whether it is universal—but I have here the case of *Whinney and the Moss Steamship Company*, in which a question arose of a general lien clause. It is reported in 15 Commercial Cases. There is a very wide general lien clause there, and the steamship company were exercising it in this particular case. I think the question arose as to whether they were entitled to exercise it in the particular circumstances. It was a question as to who were the owners of the goods. Mr. Justice Hamilton (as he then was), who, of course, was a great authority in matters of this kind, said this on page 123: "But here is a clause, although I agree that it is a stringent one"—he is referring to the general lien clause—"which is not, in my experience, an extraordinary one. I am certain I have seen clauses of this kind before. It is, at any rate, a clause that has been in use in connection with Ind, Coope and Co.'s business for many years; and I do not think there is any evidence which ought to lead me to the conclusion that something new was being foisted upon the shippers under the disguise of an innocent-looking or unnoticeable form of words in small print." And the form of general lien is set out there. It is in very wide terms. The material words are "and also in respect of any previously unsatisfied freight, inland or forwarding charges, primage, porterage, fines, costs, and other charges or amounts due either from shippers or consignees to the shipowners, or to the owners of any steamers of the Moss Line, or to their Liverpool Agents, and also for the costs and expenses (if any) of exercising any such lien, and to deduct from the proceeds of any sale the costs of and incidental thereto or to the exercise of any such lien, as aforesaid." I do not know whether you would like that case. There is a note at the side that the

case was reversed; but that was on the ground that Mr. Justice Hamilton was wrong in the conclusion he came to that the lien could not be exercised against the particular party that it was sought to.

Here is a bill of lading of the London Short Sea Traders, Sir, and I am told there is no general lien clause in it. (*Document handed*). Mr. Deacon, who is instructing me, has a number of bills of lading here in which the general lien clause does appear. So I do not think we can take it that it is universal. Now on the words of the lien, I will not take up more than a minute. All we ask for is a general lien for any money or charges due to the railway company from the owner of the merchandise. It will be the railway company's look-out to see that they do not hold goods which are not the property of the person who owes them the money. That is perfectly clear. If the railway company make a mistake—we will say there are goods consigned to A, and A owes them money and the railway company seizes the goods; if it so happens that the property has not passed to A, that is the railway company's lookout. I submit it is a just and reasonable Condition; that it has been long in existence, and that no reason has been shown why the old practice should be departed from.

(*The Tribunal conferred*).

President: The Tribunal are very much indebted to the arguments of Counsel on this matter. Our conclusion is that Condition 13 will stand.

Condition 14.

Mr. Bruce Thomas: Condition 14 deals with the circumstances in which the Companies may sell perishable traffic. It provides that in instances (*a*), (*b*), (*c*), (*d*), *and* (*e*), "The merchandise may be sold by the Company and payment or tender of the proceeds of any such sale after deduction of proper charges and expenses in relation thereto shall . . . . discharge the company from all liability in respect of such merchandise"; privided that the company must do what is reasonable to obtain the value of the merchandise, in the first place; secondly, that where merchandise is not carried through to the destination to which it is consigned by the sender the charges shall be those in operation for the journey actually completed; thirdly—and this is where the question arises—"Where telegraphic or telephonic communication is reasonable and practicable the power of sale shall not be exercised unless notice has been given to the consignee in cases under (*b*) and (*e*)"—we are agreed there—"and to the sender in cases under (*a*) or (*c*) and the consignee or sender has failed to give immediate instructions for disposal by telegraph," etc. I will go back now if I may to (*a*), (*b*), (*c*), (*d*), and (*e*), and indicate exactly where our difference is. With regard to (*a*), where perishable merchandise is refused by the consignee—we are agreed there that the sender should be advised where practicable; and there is no dispute about that. With regard to (*b*), we also agree that the consignee is to be advised where practicable; there is no dispute there. With regard to (*c*), there is no dispute there either. Missing out (*d*) for the moment, we are agreed upon (*e*), that the consignee should be advised. Therefore, the dispute is confined to (*d*); that is, where merchandise is not delivered in consequence of riots, civil commotions, strikes, &c. In that case the company submit that we ought to have the power of sale without advising anyone. Of course we must do what is reasonable, and so forth, to obtain the value of the goods. On the other hand, the Coordinating Committee ask that where telegraphic or telephonic communication is reasonable and practicable we should advise the sender.

President: Where do the words reasonable and practicable come in?

Mr. Bruce Thomas: They come in at the bottom, Sir, in sub-paragraph (iii). In other words, they want to insert not only "(*a*) or (*c*)" but "under (*a*) or (*c*) or (*d*)." They want to put in "or (*d*)," after "(*c*)" in block type, in paragraph (iii) of the proviso.

Mr. Jepson: Do you say that under (*d*) this condition provides that you shall do what is reasonable and practicable in the case of (*d*); because it does not seem to me that the last paragraph.

Mr. Bruce Thomas: No; with regard to (*d*) we may sell without giving any advice.

Mr. Bruce Thomas: Without giving any advice at all in the case of strikes; but we must do what is reasonable to obtain the value of the merchandise—we must do the best we can with it. But we ask to be allowed to deal with the merchandise without any communication with the sender. This is entirely a case of practical difficulty, the difficulty of communicating in any way with the sender, and certainly with the consignor, when there is a strike; and I will call Mr. Pike upon it.

The President: It is only when it is reasonable and practicable.

Mr. Bruce Thomas: The difficulty in our view will arise if we have an obligation put upon us to advise where telegraphic or telephonic communication is reasonable and practicable. In numerous cases the question will arise most likely in County Court proceedings as to whether or not it was reasonable or practicable to communicate with the sender.

President: But they apply equally to (*a*) and (*c*), do not they?

Mr. Bruce Thomas: Yes; but it always is, or in most cases is, both reasonable and practicable to do it in those cases. But Mr. Pike will be able to give you practical instances of the difficulties. The result would be this—well, I think I had better leave it to Mr. Pike.

President: Would he prove more than that in those circumstances it was not either reasonable or practicable.

Mr. Bruce Thomas: It is essential that this perishable traffic should be dealt with as quickly as possible and as well as the companies can deal with it in the circumstances of a strike. If they have to hold their hands to see whether it is reasonable or practicable to communicate with the sender in every case, it will put them in great difficulties. Consider what the position would be in a County Court. A claim is made for goods held up. It would appear that the company had sold them at once; it might be clear to the company that it is not reasonable or practicable for them to communicate, but in the County Court what would happen would be this; the question would be asked, "Did you make any attempt?" and the answer would be: "No, I did not; because I knew I could not do it." Then the question would be put, "What right had you to sell without making an attempt?"

President: I think you are anticipating Mr. Pike.

Mr. Bruce Thomas: Perhaps I am, Sir; but not when I speak about the position in the County Court.

Mr. John Pike, Re-called.

Examined by Mr. Bruce Thomas.

934. Will you explain the difficulties, in your view, which will arise if you have to exercise some sort of discretion as to whether you should communicate with the sender or whether it is possible to communicate with the sender?—We think that the insertion of such a provision in this Condition would really be against the traders' interests. For this reason; that if a general strike, or civil commotion, or the other things that are referred to in paragraph (*d*), happened, and particularly if it were a railway strike, the staff available to deal with this perishable merchandise would be extremely small; and although

it might, perhaps, be possible to advise one or two senders, it would be quite impossible in the circumstances to advise them all. With such a provision as this in here we should be afraid that if we advised one and not another it would be put against us, "Well, you advised the man in the next street, why could not you advise me?"; and the probable result would be that the goods would all go bad. I might, perhaps, give an illustration of what happened in the case of the last railway strike. We had then, of course, an enormous number of wagons left on hand; some in the goods yard, some in the traffic sidings, and some actually standing on the running lines. So far as we were able to estimate, on the London & North Western Railway alone there were 20,000 wagons standing, and a good many of those contained perishable goods. For instance, there were 118 wagons of perishable goods in and around Crewe; and even taking a station like Bletchley, there were 90 wagons there.

935. *Mr. Jepson*: 90 wagons of perishables?—Yes; most of them, of course, in inaccessible places. Bletchley is a small station with a small staff. The only thing that could be done was to send down such volunteers as could be got. The wagons were overhauled as they stood, the perishables were got out as far as possible, and some value was got out of them. The persons who were sent down were necessarily inexperienced, and it was impossible to make any attempt to communicate with the senders. If they had set to work and tried to do that sort of thing, they would have entirely failed, and meantime everything would have gone bad.

936. *Mr. Bruce Thomas*: The existing Condition on this is No. 10. The part of it which authorises the company to sell perishable articles not delivered in consequence of riot. That was inserted in 1916 or 1917, whenever this note was last revised.—Yes.

937. "May be sold without any notice to the sender or consignee?—Yes. There is another point also, that if the sender were communicated with in such circumstances as are contemplated in this paragraph (d), when we got instructions probably it would be impracticable to comply with them.

Mr. Abady: On behalf of the Co-ordinating Committee, I shall not ask Mr. Pike any questions or take any part in the matter; not that we do not persist in the objection but because this is a matter which more particularly concerns the Fruit and Potato Trades' Association.

Cross-examined by Mr. MONIER WILLIAMS.

938. Did you say that this clause with regard to strikes and riots was universal in 1916 or 1917?—I am afraid I do not know.

939. Some consignment notes had not got it in at that date, had they?—Some consignment notes had not got it in before 1917 probably; but I think since 1917 all companies have had it in. I cannot speak quite positively, but that is my impression.

940. It was not in the consignment note considered in *Springer's* case, was it?—I do not know.

941. That was arising out of a partial strike, in September, 1918, I think it was. Had it been in that consignment note, of course the decision would have been different?—I am afraid I do not know about that.

942. If it were not in the consignment note in that particular case, it is only of recent years, you will agree, that it has been general?—Certainly.

Mr. Bruce Thomas: Since 1917 it has been in the standardised note.

Mr. Monier-Williams: But not adopted by all railway companies.

Mr. Bruce Thomas: Yes. This Note was adopted by all railway companies in about 1917.

943. *Mr. Monier-Williams*: Then it may have been an old note in *Springer's* case. It was not in the note in that case; I have the case here. (*To the witness*): If a strike takes place, you will agree that in some instances it would be quite possible to notify the owner of perishable merchandise before selling?—It depends on the kind of strike.

944. Take first of all a partial strike.—A partial railway strike?

945. Yes.—No, I do not think it would.

946. A railway strike affecting one particular town. Do you ever get that?—No.

947. You might.—I do not think such a thing is possible.

948. That is included in the word "partial" which you have got in your Condition. Supposing you had a man out at one particular station or depot, that would be a partial strike, would it not?—Yes, but——

Mr. Bruce Thomas: The traffic must not be undelivered in consequence of it.

949. *Mr. Monier-Williams*: I agree. Supposing in consequence of that the traffic is not delivered, you have the right to sell without notifying anyone?—In the existing conditions I cannot imagine a partial railway strike.

Mr. Monier-Williams: Try and imagine a partial strike. There was a partial strike in *Springer's* case.

950. *Mr. Jepson*: Try and imagine what would happen. Let us take the strike of the carters in Manchester, which did not apply to anywhere else. Yes.

951. Supposing you take that; that would not necessarily interfere with the traffic in any other town, and, therefore, this Condition would not apply?—No; it would not apply except in Manchester.

952. But it might apply in Manchester?—Yes.

953. What do you say as to its application in Manchester?—I think in such a case the company would probably be in a position to consult with the sender; but whether they could comply with his requirements when he made them known is quite a different matter.

954. *Mr. Monier-Williams*: Yes, that is a different matter; we are not on that yet. But in a case of that sort telegraphic or telephonic communication may be reasonable and practicable?—It might be.

955. And you would adopt that course before selling?—We should adopt it.

956. In such a case it would not do any harm having this in.—In such a case as that, no. But that is the exception and not the rule.

957. So you say. I do not know that we have any evidence about that. In the case such as you mentioned of a general railway strike with thousands of wagons held up simultaneously all over the country, is it not the fact that in some localities it would be easier to give notice before selling than it would in others?—I do not know.

958. Take the case of Crewe, that you mentioned. In that case, no doubt it would have been impossible, I will concede, to have given notice in every case?—Yes.

959. But take a small station somewhere up the line and a goods train happens to just reach that station when the men come out. Is it not possible at that station for the station-master to take some steps at any rate towards notifying someone?—I do not think he would get his staff to help him.

960. Possibly. What is he to do. He has to get into touch with someone who can buy the merchandise?—Yes.

961. That entails a certain amount of communication and bother, does it not?—Yes.

962. Is there any more trouble in communicating with as many senders as he can than there is in trying to find someone who will buy the various classes of perishable merchandise on the train?—I have taken the case of Bletchley where there were 90 wagons.

963. I am taking the case of a much smaller station where there happens to be one train?—Bletchley has quite a small goods station.

964. That is a junction?—Yes.

Mr. Monier-Williams: I am taking the case of an ordinary straightforward small station in the country where there happens to be, perhaps, one ordinary

merchandise train containing, say, two trucks of perishables.

President: And one small station-master and one small porter!

Mr. Jepson: And the small porter has gone out on strike.

965. *Mr. Monier-Williams*: Yes, leaving the station-master. You do not suggest in a case of that sort that it is not reasonable or practicable for the station-master to get into touch with the sender—to send a telegram off?—Most station-masters to-day are members of the Railway Clerks' Association, and I doubt whether they would do it.

966. They might or might not. It would depend upon whether they would come out?—They would not come out; they would not do anything except their proper——

967. Then your defence that it was neither reasonable nor practicable to do this is sufficient for your purpose?—It might be in that case. But it might be reasonable and practicable to communicate with one or two of the senders. There might be 100 senders, and the other 98 would all think they were very badly prejudiced; they would take us into Court and we should probably lose.

968. So you say; you take a pessimistic view. But supposing you could show it was neither reasonable nor practicable to communicate with everyone, but you did what you could; under this clause you are entirely protected?—I think, considering the number—what I know of the circumstances of that time—if there had been such a clause as this we should not have attempted to communicate with anyone; we should have let the goods lay; which would not have been to the senders' interests nor to anyone else's.

969. If that is a risk which the traders are prepared to take, you have no objection to that?—I do not know that I should say I have no objection.

970. Supposing the traders are prepared to take the risk of your letting the goods remain there and not selling, but say, "If you sell you shall notify us where you can reasonably do so," what is, then, the situation in your view?—I think they are asking for something which is quite unreasonable in the general public interest.

Mr. Monier-Williams: My Association has extracted from its records a number of instances of actual sales which took place in the railway strike of 1919. It might be useful, perhaps, if I hand it in to see how this matter works in practice. (*Document handed.*) I want to make one point perfectly clear before we start considering this. I believe that in 1919 the Food Controller, or some of his minions, were still functioning, and it may be that he had something to say in the selling of these goods; but I do not know.

President: What is the point you wish to found upon this?—This sets out certain details of sales.

Mr. Monier-Williams: Yes. It sets out the goods, the value of the goods, and the amount tendered by the railway company after deducting, presumably, their charges.

President: Is this to show that they sold them badly or well?

Mr. Monier-Williams: One of the points it shows is the very heavy loss which is entailed by sales of this kind.

President: Could they have done any better if they had communicated with the sender?

Mr. Monier-Williams: In *Springer's* case it was proved to the satisfaction of the Court that if the consignee had been communicated with he could have sent down his own motor lorries and got the stuff.

President: Is that the case you wish to found on this?

971. *Mr. Monier-Williams*: Yes, that is one point. (*To the witness*): You do not hold the view that all fruit should be sold as perishables in a railway strike, do you? Take apples. They will keep quite a long time?—Yes.

972. Especially applies in barrels?—Yes.

973. You would not think it necessary to sell apples packed in barrels because there was a railway strike?—But I must ask you to remember that in the 1919 railway strike it was the Ministry of Food who took delivery of all these perishables.

974. That is a point which I made clear. But, now, where that complication does not arise——?—Excuse me, I do not think you made it clear; you expressed considerable doubt. As a matter of fact, they did take charge of the whole operation of disposing of the perishables.

975. I will take it from you that that was so. Take the situation now. You would not consider it reasonable now to sell such produce as apples in barrels?—That would depend; but I should not think so.

976. Nor seed potatoes?—No, I should not think so. It would depend on the condition on which the apples or the seed potatoes were.

(*The Witness withdrew.*)

Mr. Monier-Williams: We do press most strongly for this amendment to the clause as it is put up by the railway companies. We feel that the difficulties to which Mr. Pike draws attention, of great congestion of the lines and there is a hold-up in large quantities at all these large stations, would be met by the proviso in the clause that telephonic and telegraphic communication has to be reasonable and practicable. No one in his senses would suggest that in a place like Crewe, where they may have only one or two high officials left on duty at the time of a strike, it would be either reasonable or practicable to communicate with all persons interested in perishable produce. But in some cases it must be both reasonable and practicable; and I would draw your attention to this, that the clause as it stands includes partial and general strikes. As the clause stands, even in a partial strike of small dimensions, the company would have the right to sell without any reference to the question of whether or not it was reasonable or practicable to communicate with the sender, and entirely without reference to the question as to how long the strike was likely to last or whether the goods could or could not be delivered. In *Springer's* case, that was where tomatoes were landed at Weymouth. There there was no such clause giving them power to sell in the case of a strike. The tomatoes were landed while there was a partial strike in progress. I think the strike broke out the day the ship arrived. It was proved in evidence that they could have communicated with the consignee in London; and the consignee proved that if he had been communicated with he could have sent down his own motor lorries and got the goods. He was not communicated with, and the stuff was sold. It was held that was a breach of contract on the part of the railway company, and they had to pay.

Will you please look at the list I have handed in. I use it to show what a serious matter it is to the traders in this particular trade if the railway companies exercise their general power of selling without communicating with us in any way. The first case dealt with is that of apples. That is produce which will keep for some time, although it is classed no doubt as perishable and would be sold again if another railway strike took place, if the local man thought it ought to be sold. It is, in fact, a class of produce which keeps for some considerable time. The second case deals with apples and pears and empties from Messrs. Cross and Mounsey, of Workington. The empties, that is to say the receptacles in which the fruit was contained, was sold. The value of those receptacles was £11 10s., but all we got for the whole consignment was £17 6s. 11d. returned by the railway company.

Mr. Bruce Thomas: But they were sold by the Food Controller.

Mr. Monier-Williams: I agree. But this is the sort of thing which might happen in the future if similar

circumstauces arose; there is no reason to suppose that the railway company would get any better prices, or deal with things any less arbitrarily, than the Food Controller did. I have not much complaint about the tomatoes, because they were delivered; but they were in a useless condition. In the case of Mr. Fisher of Workington, the empties were worth £2 11s.; we got £4 altogether for the whole of the goods. The next case is that of Messrs. Flewitt & Co., of Manchester; 50 barrels of apples were sold, although they would have kept for months. With regard to the shallots, they had been in warehouse in London aud were sold after being there a fortnight. Possibly that was the Food Controller, so I will not lay too much stress ou that. As a matter of fact, we know that shallots will keep a very long time. In another case 104 sieves of apples were concerned; they belonged to Mr. Newman of Brentford. That was a mysterious transaction; at any rate, the value was £32 but we got only 8s. 11d. The last case on the list relates to 10 tons of seed potatoes. That was a matter which might arise again. The point about that is this, that seed potatoes are worth very much more than what is called "ware" potatoes; and there is a danger if the railway compauies are given power to sell in these circumstances without communicating with us that they may sell seed potatoes as "ware." That was done in this case, and the price realised was out of all proportion to the value of the seed potatoes. In addition, seed potatoes keep; and in this case, it was September, they would have kept throughout the winter. There, again, of course the action of the Food Controller may have some bearing on the matter.

My point, therefore, is this. Our objection at present stands that we would like the sender notified. It may be, and I am willing to concede this, that it would be more convenient for the railway companies to notify the consignee if they can notify anyone. Perhaps they will say as to that. In some cases they may know the consignee but not the sender. Of course the sender is the person who is better able to deal with the goods because he is probably a large man who is sending his goods to a small man, and he may be better able to send instructions as to what emergency measures should be taken to get the best dealing with the goods. He will know whether a market is available in the neighbourhood, or be able to send and get them or direct that they should be sold, as the case may be; whereas the consignee may not be in such a good positiou. Therefore, it would be better from our point of view to notify the sender. But if the railway compauies say that they would prefer to notify the consignee, that is a matter which we would be willing to consent to in the circumstances. But that someone should be notified where it is reasonable aud practicable we do most strongly suggest; because we say that in all these cases where general strikes take place, and there is an entire dislocation of traffic, the railway companies will most assuredly be able to satisfy the Court, or the claimants, or whoever is concerned in the matter, that they could not have notified anyone. Even in cases of general strikes, where they can notify us they ought to do so.

In considering this Conditiou, I ask the Court to remember that it is not an old Condition. It has been only universally adopted, as has been said, since 1917; therefore, we have not got here a Condition which has been in operation for very many years. We feel that as between common-sense traders and common-sense railway officials there ought not to be, and probably would not be, such a big crop of actions as the railway companies appear to fear; because, after all, before a man launches an action he has to take advice, and it is hardly conceivable that in all cases where a man's goods have been sold without notificatiou to him he would bring an action against the railway company, because he would have in front of his eyes those words about telegraphic or telephonic communication being reasonable and practicable. Aud if the railway company could satisfy the claimant that they did all they possibly could, then the average trader, who is a common-sense man, would hesitate before he launched an action. I suggest that by those words the railway company are fully protected against any extraordinary circumstances which may arise; but where they can give notice it is only fair to put upon them an obligation to do so before they sell.

Mr. Jepson: Before you sit down I should like to put this point to you arising out of what you have said. Supposing it were reasonable and practicable for the railway companies to communicate with the senders, and the senders at once responded and gave some instructions to the railway company, which instructions it was impracticable to carry out, what would the position of the railway company be in that case?

Mr. Monier-Williams: I do not think anyone could possibly suggest they should be penalised for failing to carry out impossible instructions.

Mr. Jepson: Is is quite conceivable that there is a general strike, and these perishables arrive at some place, not necessarily at a station, and the railway company feel that they should communicate with the senders; they do so, and the senders say, "Although these goods have not arrived at the destination where they can be delivered to the consignee, send them to So-and-so"—but it may be equally impossible for the railway company to send the goods to another station as it is to send them to the original destination.

Mr. Monier-Williams: I appreciate that.

Mr. Jepson: What is the position of the railway company when they have done what is practicable and reasonable in regard to communicating with the sender, if the sender's subsequent instructions are impracticable?

Mr. Monier-Williams: First of all, I would remark that precisely the same difficulty might arise under (a), (b), (c), and (e).

Mr. Jepson: But I am dealing with (d).

Mr. Monier-Williams: Yes; it is a problem which might arise in cases where the company proposed to take upon itself the duty of communicating. For instance, under (e) in the case of a flood or landslip.

Mr. Jepson: It is not so reasonable to suggest the same difficulty might arise; because if goods under (a) were refused by the consignee and you communicated with the senders, they might give instructions to send the goods somewhere else which it would be practicable to do; and so with regard to (b) and (c) and (e), it might be practicable to communicate with the senders and get instructions which could be carried out. But in the case of a general strike, if the instructions could not be carried out what would be the position of the railway company?

Mr. Monier-Williams: I do not suppose anyone would hold then that it would be harmful.

Mr. Jepson: And they could sell?

Mr. Monier-Williams: Yes.

Mr. Jepson: And if they do communicate with the sender and get some instructions which it is not possible to carry out, they would be right in selling the goods?

Mr. Monier-Williams: I do not think anyone would argue otherwise in that case. To start with, let us suppose the case of a general strike and a trader communicated with to this effect: "Your goods lying at So-and-so; what shall we do?" We must presume the trader to be a man of common sense; he must either sell the goods where they are or he might say: "I will fetch them by lorry, or some other means." He probably gives one or other of those directions. If he is fool enough to say "Send them to So-and-So," I do not think he can be heard in any court to complain. That is all we want. We do not suggest that the railway company should be hit if they fail to carry out impoisible or unreasonable instructions. It is really only to give the consignee, or the sender, as the case may be, a chance of dealing with the goods himself, if he can do so to his own advantage. If he cannot, he would probably be glad to let the railway company sell and have no further bother;

but if he can deal with the goods he ought to be given a chance of doing so.

Mr. Jepson: It is a question of balance. There might be a few cases in the course of a general strike where the sender might, by reason of having his own lorry or by getting into touch with someone who has lorries in the immediate neighbourhood, deal with the goods, but you want to put on the railway company the necessity of providing machinery for circularising at every place, whereas it may only occur in a minimum of cases.

Mr. Monier-Williams: That would be so if it were not for the words "reasonable and practicable." If it were not for those saving words the onus put upon the railway company would be in fact quite intolerable. I am ready to admit that at once. But one has to remember that in our kind of traffic there is not so much of the small man really. Most of this traffic when it gets on to the railway, I think I may say, is the property of fairly big men, and, of course, they are people who are well able to look after themselves and give instructions for the disposal of their own produce. The loss occasioned by selling without any expert knowledge is so great that the loss to us is very much greater in the balance, in my submission, than the possible difficulties which the railway companies may experience in certain cases; because our particular kind of traffic requires very special knowledge of markets and conditions before the goods can be properly realised to their fullest extent. That is a knowledge which we have, but which the railway companies have not got; and that is why, when our stock is sold in various circumstances, the loss is out of all proportion. It does not put anything on the railway companies really very much more than they are willing to take on in other cases, because they always have their saving powers which would certainly apply in the majority of cases of general strike, but, as the clause now stands, in my submission it is too drastic a power to be granted in the case of a partial strike.

Mr. Jepson: Well, in a partial strike, of course, the Condition would only be applied partially, and it could only be applied partially as you said.

Mr. Monier-Williams: Yes.

Mr. Jepson: But there are some real difficulties. For instance, suppose we take the illustration that we had given to us yesterday in regard to leeks; they went wrong because of the sheeting. Supposing it happened in that case during the strike, a railway company might have found it reasonable to proceed to send a telegram down to Mr. Smith of Feltham, about these leeks, but Mr. Smith would have said: "I do care what you do; they are not mine; go to Bradnum." Bradnum was the owner of the leeks, having bought them from Smith, and had them sent to somebody at Glasgow. In the meantime, while all these things are going on under very difficult circumstances, the vegetables are spoiling.

Mr. Monier-Williams: But there is no further liability on the railway company because of that.

Mr. Jepson: I know, but they think it is in the interests of the traders that they should not be hampered by all this necessity of communicating first with one and then with another. I think you will agree with me that a great deal of the fruit and vegetable business is carried on as Mr. Bradnum's business is carried on; it is really in the hands of middlemen between the grower and the consignee, and the communication with the sender would not help the railway company very much.

Mr. Monier-Williams: No. Of course, in a number of cases I think probably it might not, but on the balance of cases probably it would. This matter, of course, has been very carefully considered by the Federation, and on the balance of cases they have come to the conclusion that it would be immensely to their advantages if notice could be given where reasonable and practicable. In some cases the stuff might be lost; in other cases, which would outweigh those in importance, the goods could be satisfactorily dealt with, and probably much more satisfactorily dealt with, than the railway companies could deal with them. It is really only on the balance of advantage that we ask this.

May I say in conclusion—I do not want to repeat myself—that these saving words are quite sufficient to protect the railway companies from any hardship whatever under this. One has to remember that if they have got enough men to dispose of our stuff, to get somebody to buy it, possibly communicate with the purchaser and possibly make some bargain with him, to a certain extent, if they are doing the best they can to get a good price, they would, in those circumstances, in all probability be able to communicate with one of the sellers.

A point has been put to me here which happened during the last strike. Goods were sent to Covent Garden; within a few miles of London they were held up. No doubt the same was true of other big sales; I do not know. If it had been possible to get a communication from the railway companies in respect of these goods, or some of them, at any rate, it would have been the easiest matter possible for those goods to be sold by people who had knowledge, instead of which they were sold where the trucks happened to be, at a very great loss. Another point is, that in cases where goods are sold, very often by a man like Mr. Bradnum, for instance, and instructions are merely given to send them from one place to another, of course, the difficulty might be got over in this way, that when a strike breaks out a man like Mr. Bradnum, knowing what goods of his are on the railway, or to have been consigned, or what instructions he has given about various consignments of goods to go from one part of the country to another, could immediately communicate with the various senders that he knows, and could say to them: "If you get news about such-and-such goods being held up by strike, send them to So-and-so," or "Do such-and-such a thing." It would be possible to improvise an organisation to deal with the goods in a case of that sort, whereas, of course, as Mr. Jepson says, difficulties will arise if the sender, who has no further interest in the goods, is notified; of course, in that case the sender would say, "I do not care what you do with them," and the railway company is at liberty to do what they like with them.

Mr. Locket: Are your clients really of opinion that on the balance they will get any advantage from these words? Would not the effect of the insertion of these words in this provision really amount to this, that it might tend to deter the very few officials who, in the case of a railway strike, would be a work from taking the responsibility of selling the goods. If there were telephonic and telegraphic communication available they might say: "Well, before we sell them we must communicate." There would be some hundreds, or I dare say in London it would be thousands, of people with whom to communicate, and it would take such a long time before they could get through to the sender of the goods that they would have deteriorated in value far more than if they were sold at once, and the loss to the trader would be greater in those cases.

Mr. Monier-Williams: Well, my Federation have considered it very carefully, and they do not think that that would be so; they think the balance of advantage would be the other way; I cannot, of course, say more than that.

Mr. Locket: I should have thought that it would be to the advantage of the trader to get them sold at the earliest possible moment.

Mr. Monier-Williams: Their point is that in a number of cases at any rate they could get notification through, and they could deal with the stuff in their own way; in the case where communication could not be got through, then the companies are protected by these words. That really deals with all the cases on one side of the line and the other.

Mr. Jepson: There is a further point in the interests of the traders: the railway companies might say: "We will not do anything at all; we will not sell." There is no obligation on them to sell, and

rather than go to all this trouble in difficult times they would say: "Well, let the stuff rot. We will not move," because this Condition only applies if they are going to sell. There is no obligation on them to sell, and it might suit them in many cases to sit quiet and do nothing.

Mr. Monier-Williams: All I can say to that is, that that is a matter which has been considered by this representative body of traders, and they are prepared to face that situation, and if in the face of what you put to me we are prepared to go on and still press for these words, I suggest that we should be reasonably entitled to have them put in. If the insertion of the words could be shown to throw an intolerable or an unreasonable burden on he railway companies, then I should not be justified in pressing for them, but if the only objection to putting them in is that we should lose money hereby, because the railway companies would do nothing rather than sell to the best advantage, then that is a matter which would boomerang—which would come back upon our heads—and we could not be heard to complain afterwards.

Mr. Locket: That is what I am afraid of. I am afraid it is likely to deprive your clients, if you are successful, of the benefit they would derive from this Condition. This Condition is for the benefit of the trader. The only advantage the railway company can get out of it is that they clear their premises of certain perishable stuff which might be a nuisance but really the Condition itself is entirely in favour of the trader.

Mr. Monier-Williams: Possibly, but all the traders who deal in this perishable merchandise are unanimous in asking this. There is no difference of opinion about it, and therefore, if I may say so, with respect, I do not think the result can be such as you suggest it probably will be. They are all unanimous in asking for these words, and if I may mention this our proposals are supported by the following Associations, in addition to the National Federation of Fruit and Potato Trades Associations, which I represent, which practically comprises the bulk of the fruit and potato merchants and dealers in the country: the National Farmers Union, the National Fish Association, the Federation of Fruit Growers, and the Meat Importers Association. They are all pressing for this, and there is no difference of opinion among them at all. Of course, if the railway companies did nothing and just notified nobody, and let the stuff rot, of course that is a point which I have to meet as best I can by saying that we are prepared to take that risk.

Mr. Jepson: Has that seriously been considered by all your clients who are instructing you, because it does seem to me as a practical thing if all this machinery is to be put in operation by the railway company with very little effect probably from your own point of view afterwards, because many instructions would be given which could not be carried out, the alternative would be the serious consideration of doing nothing and letting the stuff rot, which would not be in the interests of the traders.

Mr. Monier-Williams: I do not think, if I may say so, that in many cases that instructions would be given which could not be carried out because of the facilities which our people have of disposing of their stuff in every town; they have agents and so forth.

Mr. Locket: Those are most of them consignees; you are proposing that the sender should be advised. Take your instance which you gave just now of a number of consignees who were within easy reach of London in the last strike. Advices would be sent to the farmers of the country all round, and it would not help your clients much for the farmers to be advised. The farmer would take no notice at all. He would say: "I have sent it to Mr. Bradnum," or somebody at Covent Garden, and he would do nothing about it at all, and all this time the goods would be deteriorating.

Mr. Monier-Williams: In the majority of cases they would be his goods; probably in some case not, but in the majority of cases they would be, and I appreciate the point you put to me; that is why I suggested it might perhaps be better to put in the word "consignee" instead of "sender." It would probably be better to notify the consignees than the senders, and the consignees in a number of cases at any rate might be more concerned to get the goods. The consignee's name would undoubtedly be on every parcel or on the truck, and it would be considerably easier to notify the consignee possibly than the sender. The consignee, of course, would be the person who would be more concerned to get the goods and he would be the person who would be likely to make arrangements to get them by lorry, if necessary. I do not think I can add anything further.

Mr. Jepson: Are you going to call any evidence?

Mr. Monier-Williams: The only evidence that I have would be the Secretary of the Federation, who got out these figures, and who can speak as to any points which arise on them.

President: I think they speak for themselves.

Mr Monier-Williams: Yes, I think they do.

Mr. Locket: One knows there must be a loss in these cases, and it a serious loss undoubtedly.

Mr. Monier-William: It is. There is no evidence I could call which would help the Tribunal, I think, beyond what I have already said, except that in spite of the possible disadvantages which one can suggest if this amendment is allowed, it is the unanimous wish of all those trades who deal in perishable merchandise that the amendment shall be passed, and that is what I am instructed to press.

Mr. Bruce Thomas: I only wanted to point out that the old Condition that you see in existence at present was quite recently held to be reasonable in a good deal of litigation that arose out of the sales that my friend has referred to that were made by the Food Controller. In connection with this comment upon the poor prices obtained, it must be remembered that they were not the prices obtained by the company, but by the Food Controller, who was most anxious at that time and had a great responsibility in distributing food.

President: The Tribunal being satisfied that the insertion of the amendment would not be in the interest of the traders, Condition 14 will stand as drafted.

Mr. Bruce Thomas: Then on Condition 15 no question arises; that is the sale of non-perishable merchandise.

Then the next Condition, No. 16, provides that the company are not to be liable for loss of market or any indirect or consequential damages and in respect of certain other matters that are agreed. I do not propose to go into that at any length at all in opening it, for this reason, that if you refer to the existing Conditions, No. 11 provides: "The Company shall not be liable for loss of market indirect or consequential damages." Those substantially are the words that are in dispute here. This, again, is a Condition that has been on consignment notes more or less generally; anyhow, the bigger companies, the Great Western and the North Western, have had it, I think, since the year 1860, and I believe it has never been held, and I do not know that it has ever been suggested, that it is an unreasonable Condition. I am not at the moment aware of it ever having been held to be unreasonable. In those circumstances I would suggest that perhaps the more convenient course would be for my friend to indicate the objections that there are to it, and perhaps I might deal with them afterwards. I do not want in opening to try and set up something which there is to be no attempt made to knock down, and perhaps the discussion upon it might be shortened in that way.

President: Would that be convenient to you?

Mr. Abady: Quite.

(*Adjourned for a short time.*)

Mr. Abady: When we adjourned you will recollect my friend, Mr. Bruce Thomas, had put upon me the onus of justifying the alteration of Condition 16 desired by the Co-ordinating Committee. I must confess that this is a matter which only causes an agitation of the white corpuscles, but it is nevertheless important. The question is whether it is just or reasonable that the words which say: "The company shall not be liable for loss of a particular market or indirect or consequential damages" should be inserted. The intention of the parties and the feeling of the traders and the railways is, I think, at one on this; that is, that as a general rule it is the fact that a contract of carriage does not involve a railway company in responsibility for the loss of a market either general or particular; we are agreed on that. The cases show that in particular circumstances the railway companies have been held liable, and that is where the object of delivering the traffic brought to them in a proper way has been frustrated through some negligence of their own, or something of that kind, and it is not pretended by the traders that you could ever carry the matter beyond that, but to say that the company shall not in any case be liable (I am dealing with the loss of market for the moment) for the loss of a particular market is to do something which may stop somebody who, owing to the particular circumstances under which the contract of carriage was entered into, might otherwise be entitled to claim as part of his measure of damages the loss of a particular market. A similar consideration applies to "indirect or consequential damages" except that I think it may be put in this way, that the mention of the phrase "indirect or consequental damages," must mean damages which the law considers to be too remote. I think that is a fair paraphrase of what indirect or consequential damage is. If that be so, that surely is a matter which is taken care of by the present law, and it is a matter for the judgment of the particular Court before whom the dispute is brought when the question of damages and the measure and extent of them is considered. It always must be a matter for consideration by any Court whether the damages claimed are indirect or consequential, or, in other words, too remote, and it seems to us to be quite unnecessary to put in those words, because we think that is the state of the law at the present time. But, to put in words to show that they shall not be in any case liable for indirect or consequential damages, might be to deprive a trader of a claim for damages which, having regard to the circumstances of the case, he is entitled to, but which, in other circumstances, might have been held to be indirect or consequential.

President: I wish both of you would help me on this matter. Is it your opinion that under sub-clause 3 of 44, if a trader wished to make a special contract with a railway company in view of a special arrangement to catch a market, he could make it?

Mr. Bruce Thomas: Certainly; there is nothing in the Railways Act to prevent a railway company accepting liability to get the goods to a particular market, but such a contract instead of being left to some oral arrangement would have to be definitely made in writing.

President: Now, could you go a little further than that and help me in this way: in some of the cases which have been decided heretofore it has been said in the Judgments that that would be a matter of special arrangement, and the company would be entitled to make the higher charge; do you remember those cases?

Mr. Bruce Thomas: Yes.

President: There are cases of that sort; I am not pinning myself to any particular case, but I have a general recollection; would that be within the scope of a railway company's power now?

Mr. Bruce Thomas: When you say "now" do you mean now or after the appointed day?

President: After the appointed day?

Mr. Bruce Thomas: It would be within the scope of the railway company's power to do that, subject, of course, to the particular amount of the charge being within what might have been prescribed by this Court.

President: Within what we call the standard charge?

Mr. Bruce Thomas: Yes.

President: I am only exploring the meaning of this Statute which I really do not know much about as you can imagine, only having had it before me for a few months. Is it in your minds that when it says "no variation shall be made upwards or downwards" that it precludes any upwards, or is upwards exceptional as well as downwards? I am afraid upwards is barred is it not?

Mr. Bruce Thomas: Yes.

Mr. Abady: I think so.

Mr. Bruce Thomas: In no circumstances could we vary above the standard.

President: Just following it out for a moment, will you be operating on these Conditions at the standard rate?

Mr. Bruce Thomas: No, not necessarily at the standard rate. We would be operating upon these Conditions whatever the rate may be whenever it is a company's risk rate, whether it is a standard or exceptional, or any other sort of rate—any merchandise traffic.

President: What I am driving at is this, could you, for the additional service of catching the market, make an additional charge?

Mr. Bruce Thomas: No, I do not think we could.

President: You see what I mean.

Mr. Abady: Unless it is an exceptional service.

President: In the old cases the Court used to say it is a special thing.

Mr. Bruce Thomas: Even in the old cases, although a special charge might have been made, you still had your maximum limitation; you could not go above that.

President: No, but it was within the maximum. Sometimes the actual being below the maximum for ordinary traffic it was said: "There is still a margin and they can make an extra charge for the extra service."

Mr. Bruce Thomas: The future standard rates will really be the maximum rates. They will be subject to variation by this Court, but they will, in fact, for the time being be the maximum rates, and if traffic is being carried at exceptional rates it would be quite open to the company to make an agreement to carry at something above the ordinary exceptional rate, provided, of course, it was within the standard rate; that would be practicable.

President: Then am I right in thinking there is this elasticity—you both agree to that—under Section 44, sub-section 3, of making a special contract under special circumstances such as catching a market, or otherwise?

Mr. Bruce Thomas: I think so.

Mr. Abady: Yes, I entirely agree to that. Then, Sir, if you think that under the circumstances it helps anybody to put those particular clauses in this Condition I would ask you to consider whether it might not be open on the meaning of the Condition, taken in conjunction with the other Condition, to misapprehension by the Court in the case of dispute if the words "in any case" remain in the Condition. We think that "in any case" gives an impression of something that over-rides everything else; that nothing else must be taken into consideration; that in considering the question of a market or indirect or consequential damages you must not consider any other part of the thing, or any other part of the obligations, but the company shall not in any case be liable, and we would ask that those words should be omitted. To mention that brings me to a point which is not a matter of objection but which I said at an earlier stage of these proceedings I would refer to. The probable reason of inserting "in any case" is to emphasise the first four words of paragraph (*e*) of Condition 16, namely, "subject to these Conditions." You see in paragraphs (*a*) and (*b*) it is: "The company shall not in any case." Then paragraph (*e*) is

"subject to these conditions, loss, damage or delay proved by the company to have been caused by or to have arisen from (i) insufficient or improper packing; or (ii) riots, civil commotions," and so on, and "(iii) consignee not taking or accepting delivery within a reasonable time." The view of the parties, and I think I can say there is no disagreement between the railway companies and the Traders' Co-ordinating Committee, is this, that those exceptions mean that the company shall not be liable in those cases if it can be proved that the loss, damage, or delay has arisen solely from those causes, and with no other contributory cause, as, for instance, insufficient or improper packing; but it was intended by inserting the words "subject to these conditions" to bring in the proviso to Condition 3 whereby the company would have the additional onus of proving that although the package was insufficiently or improperly packed they use all reasonable foresight and care. That is the same way of saying that they are under proof under Condition 16 that the loss has only arisen from that cause. I want to draw your attention to it, because I do not know that the parties are absolutely clear that the drafting does make the intention clear, but I think I am right in saying that that represents the joint intention of the parties who have come to the agreement so far as there has been agreement. Of course you will say: "But it says 'subject to these Conditions, loss, damage or delay.'" If you look at Condition 3 you will see that Condition 3 relates to loss misdelivery of or damage to merchandise, that is something that occurs to the merchandise. If you look at Condition 4, that is not loss to the merchandise but loss to the trader caused by delay or detention, which is a different kind of loss. One is loss, misdelivery or damage of the merchandise and the other is loss caused by delay or detention. It might, of course, be that the merchandise suffered through the delay, but it is open to the construction that it means a loss to the trader or damage to the trader through the unreasonable detention. You will see that the Conditions there are not so onerous on the railway company as Condition 3, but if you look at Condition 16 you will see they are not subject to these Conditions liable for loss, damage or delay, that is to say, matters which arise under Condition 3 or matters which arise under Condition 4, because delay arises under Condition 4 and the other matters, loss or damage, arise under Condition 3. We wanted to make it quite clear that 16 is subordinate in that sense to 3 and 4. I do not know who was responsible for the drafting, but whether the traffic effects that purpose or not, the traders want to draw attention to it, because if there were a dispute in a Court I do not suppose any Counsel would be allowed to cite these proceedings and state what anybody's opinions were, or refer to the statement of the intentions of the parties; all that could be referred to would be these Conditions.

Those are the points that I wanted to make upon that. The point about the black type I hope I have made clear, and I want the Tribunal to clearly understand that the traders do not pretend that it is a reasonable thing to fasten the railway companies with indirect or consequential damages or to fasten the railway companies in the ordinary way with the loss of a market, be it general or particular. They do not contend that for a moment, but what they do say is that there may be consignments under this contract where a Judge might find as a matter of fact as a reasonable thing that what might have been indirect or consequential damage in one case was not indirect or consequential damage in the other, and being minded to come to such a decision, if these words were in that condition the Court might be stopped by reason of those words, and so work an injustice on one of the parties.

President: Both of you will tell me whether this is right, but would you not have to show a special contract before you could get either what you call now your indirect or or consequential damage or your loss of market as special damage?

Mr. Abady: No, I think not. I do not think that "indirect or consequential damage" is an attempt to define what otherwise might be thought by the Court to lie within the ambit of the damages that a person is entitled to.

President: Subject to anything you may say, I think it means rather more than that, does it not? It means, damages which do not directly flow from the loss or whatever it is, and which could not have been in the minds of the parties when the contract was made?

Mr. Abady: That is part of the common law, is it not? Nobody can get damages for a breach of contract that do not arise out of that breach.

President: No, but people try to get it sometimes.

Mr. Abady: They do, but it is a matter for the Court on the particular facts, is it not, to see what damage is too remote and what damage is not too remote. Frankly, I think the case that the traders put is very much stronger on the question of indirect or consequential damages than it is on the loss of a particular market.

President: If you take an ordinary consignment note and consign under it, you could not hold the company liable for what is known as indirect or consequential damage. Suppose you made a special contract. Take, for instance, the case where they handed a piece of machinery to the railway company. No railway company in its senses would imagine that anything particular turned on the value of that piece of machinery for a little time, but the man who gave it to them said afterwards: "Oh, but this is a vital part of a most complicated machine. By not delivering it you have held up the machine, and I claim all the damages": that was because it was not within the contemplation, nor could it have been within the contemplation, of the parties when the contract was made. But assuming that he had gone to the railway company and said: "This is a vital part; will you deliver it in three days," and made a special contract, then those damages would have been special damages under the special contract; is that right, or approximately right?

Mr. Bruce Thomas: That is my unedrstanding of it.

President: That is my understauding of it, too.

Mr. Abady: The only point is, that the indirect or consequential damage part of the clause is an attempt to settle beforehand for the Court who is going to decide a dispute.

President: This is an ordinary contract, and not a special contract.

Mr. Abady: I have not thought of an example, but it seems to me that there may be damages that a man might claim and might succeed in his claim under an ordinary contract, which under other circumstances might not be considered by the Court to be too remote, and under some circumstances might be so considered. The Co-ordinating Committee thought that the company, if those words are omitted, would be sufficiently protected by Condition 24. I hope I am always frank with you——

Mr. Abady: —— and I am bound to refer to paragraph 11 of the existing Conditions, and I must in justice to the railway companies and to all the parties point out that the existing clause is simpler; in fact, I am not sure that it is not better. What the company now are excepting themselves from is loss of a particular market; before they excepted themselves from "loss of market"; I am bound to point that out to you. That was in the existing consignment note, and unless you consider that it is just or reasonable there is no reason why anything which is in the existing consigument note should go in this.

I hope I have stated the reasons clearly. There are three points to consider: whether "loss of particular market" should be in; whether "indirect or consequential damages" should be in; and if either of both of them should be in, whether the words "in any case" should be omitted or not, and then whether you would consider as to the wording of paragraph (c) "subject to these Conditions, making it clear that that part of the clause is subject to 3 and 4.

President: Really that last point is a matter for you, is it not? You say you have discovered some ambiguity in the draftiug—I understand that to be so—and you do not know what the effect of it is now: ought not yon to try and adjust it between yonrselves so as to carry out your meaning?

Mr. Abady: I think that is the conrse that should be taken. The other part comes to yon as agreed, and if there were an alteration made in it you might wonder why it was made.

Mr. Locket: Is there really any serions ambignity abont it? I am not a lawyer, but it seems to me that "snbject to these Conditions" means that this does not erase previous Conditions or other Conditions which deal with similar cases, and this only deals with three particular instances in which the company shall not be liable—insufficient packing, riots and strikes, and consignees not accepting delivery.

Mr. Abady: Of course, the reason why those words are not put in Condition 3 is that the matters which are excepted are loss, damage or delay, some of which are in 3 and some of which are in 4; so you may do it by putting them in either 3 or 4—that is our own risk. However, I am much obliged to you for your observation on the latter point, and I do not think I can carry the matter any further n the other part of the case.

Mr. Clements: I have only one very short observation to make, and that is that the question seems to me to arise whether the loss of the market, if caused by negligence on the part of the railway company, will assume a different aspect in this Condition. Of conrse, I am referring indirectly to the provision of Section 7 of the Railway and Canal Traffic Act, 1854. There is a short observation of Lord Wensleydale in the well-known case of *Peake* v. *the North Staffordshire Railway Company*, which I have quoted here in Macnamara's Law of Carriers; I have not the report of the case itself. It is: "Every stipulation or condition professing to exempt a railway company from liability for its own negligence or miscondnct or that of its servants or agents is unreasonable." I thoughbt it right to draw attention to that, as it is not clear here whether those provisions would relieve them in cases where the loss of market is caused by delay.

Mr. Bruce Thomas: The first point I wish to draw the Court's attention to on this Condition is, that it is inserted in this body of Conditions as essential; it may uot have been essential to have incorporated snch a Condition in the old Conditions.

President: Because it might be held to be unreasonable, do you mean?

Mr. Bruce Thomas: No, because a railway company is not liable for damages that are too remote, and I agree that "indirect or consequential damages" is intended to refer to damages that are too remote and damages arising from special or exceptional circnmstauces with reference to which the railway company have not contracted. But I wish to draw your attention to rather a different position that is created by these Conditions. Primarily, the 16th Condition relates to damages for delay principally; its principal application, I think, is with reference to damages for delay. Would you turn for a moment to Condition No. 4. You will find there a provision that "The Company shall, snbject to these Conditions, be liable for loss proved by the trader to have been caused by delay." That is an affirmative declaration of the company's liability in cases of delay. Without that affirmative declaration in the case of goods being delayed, the owner of the goods would be entitled to such damages as he could show properly flowed from the delay that the goods had suffered. But this is put in a very wide form, and I think it may be of great advantage to the traders that the company are declared here to be liable for loss proved by the trader to have been caused by delay.

Mr. Abady: Will you read the whole of the clause; "unless the company prove "——

Mr. Bruce Thomas: "Unless the company prove that such delay has arisen without negligence on the part of the company"; that is to say, they are never liable unless the delay is due to their negligence, but there we take the onus upon ourselves of proving that we are not negligent; but for this Condition that ouns would have been on the trader. The point I am tryiug to make is as to the (in our view) absolute necessity for 16 following upon 4, which provides that the company shall be liable for loss proved by the trader to have been caused by delay. A trader might well say: "This traffic was consigned to Covent Garden. Covent Garden Market takes place within quite a few honrs of the day. You were a few honrs late, and yon missed the market." To the layman the loss there would be the loss proved by the trader to have been caused by the delay. Those words in Condition 4 are very wide. That declaration being contained there it was essential to subject it to some conditiou which was going to make it perfectly clear that the railway company are not going to be liable in exceptional circnmstances for a particular market. We do not say "loss of market"; we confine ourselves to "particular market." So in our view it is essential now because of 4 to state what formerly was only a declaration of the law as we understood it. I think this Condition, although it only stirred the white corpuscles of my friend, stirs such red ones as we have, because we think without it we might be opening the door to all sorts of claims, which formerly we would not have been liable for. We might have relied on the ordinary law of remoteness of damage, but having regard to the wide words now used in 4, it becomes necessary to deal with this case specifically. Now with regard to these words "in any case," the reason for the insertion of those words is this, and there is much authority upon this point; a carrier ordinarily who says that he will not be liable for certain things is liable for those things if they have been caused through his neglect; but if he wishes to absolve himself from his own negligent acts, then he must say so in terms. I think one of the early cases upon that is *Phillips* v. *Clarke*, and more recently *Price* v. *The Union Lighterage Company*, but that is, I think, the correct statement, that a carrier, who in ordinary circumstances is an insnrer, if he makes a condition and says: "I will not be liable for so-and-so," that does not mean that he will not be liable if negligence is proved. In Condition 16, paragraphs (a) and (b) deal with cases of delay to goods. The railway company are not to be liable under these Conditions for delay in cases where they prove that the delay has not been caused by their negligence, and, therefore, the view we took was that it was certainly advisable to make it clear in Condition 16, negligence or not, that we are not to be liable for indirect damages, and not to be liable for a particnlar loss of market. Those words may not be essential, because if I were arguing it, I should suggest that Condition 16, referring as it does to delay and saying that the company are not to be liable, must mean that the company will not be liable for loss of a particular market in a case of delay, and it must mean delay through their own neglect, because otherwise they would not be liable at all, and the question would not arise; but, however, it was thought advisable to put in those words "in any cass," and I do not know whether my friend really is taking any serious objection to them; I did not gather that he was particularly stirred on that subject.

Mr. Abady: Those who instruct me attach great importance to their omission; they think they ought to be omitted.

Mr. Bruce Thomas: I have given you the reason why we think it advisable that they should remain in. In order to make it perfectly clear, my friend, Mr. Clements, raised the point and said "in any case" would exclude negligence.

President: He was bringing it to a head.

Mr. Clements: I was not referring to "in any case" there.

23 *March*, 1923.] [*Continued.*

President: Just in order to clarify our minds if we can, does "in any case" mean "negligence or no negligence"?

Mr. Bruce Thomas: Quite—"Negligence or no negligence." I understood Mr. Clements' point was that the words "in any case" would include negligence.

Mr. Clements: I did not mention it, but I have no doubt that it does apply to it.

Mr. Bruce Thomas: I wrote it down; probably it was my mistake. Of course, it is intended, just to make that one point clear, that if we may be negligent in delivering the goods, that is, that the delay is caused through our negligence, still we are not to be liable if we lose a particular market, and that is the whole point of it.

President: I only wanted to get it clear from you.

Mr. Bruce Thomas: If we were not negligent no claim would arise. Now, Sir, I do not want to take up more time on that; I think I have stated all I require to.

With regard to what appears as the agreed portion of the Condition, any drafting suggestion my friend has to make I shall be only too pleased to consider, but I invite your attention to it for a moment. It is "The Company shall not be liable for loss"—I am omitting a good many words—"proved by the company to have been caused by." I should have thought that that made the position perfectly clear. Unless the company prove that it was caused by insufficient package then they cannot plead the Condition; the onus is upon them to do it. I do not quite see the necessity myself for "subject to these Conditions"; but, however, if there is any suggestion my friend makes with a view to improving the drafting and making it more clear it seems to me that it would be perfectly clear if "subject to these Conditions" were omitted. The insertion of those words seems to me to be pulling us round in a circle the whole time. However, I do not think we shall have any difficulty upon that.

Mr. Abady: You agree that there is the double onus, and that it was intended that there should be?

Mr. Bruce Thomas: The double onus?—No, one onus.

Mr. Abady: You have to show that it was caused by insufficient or improper packing; you have also to show that you used all reasonable foresight. That goes to the root of what the agreement was, according to my instructions.

Mr. Bruce Thomas: I do not want any double onus; one onus is enough for me. I have to prove that the damage was caused through insufficient packing. If it is said "No, that was not the cause at all; the cause was the want of sufficient care, or the want of proper foresight," then I should have failed to show that it was caused by insufficient packing.

Mr. Abady: I am sorry that this has taken this turn, because, as far as my instructions go, it was distinctly understood and agreed when Condition 3 was agreed to that Condition 16 should be subject to Condition 3. It is all very well for my friend to say he has to prove it was caused by improper packing.

President: I think it is primarily a matter for you two to settle.

Mr. Abady: Excepting the intention.

President: I do not know anything about the agreement, and I do not want to know anything about the agreement. You say there is an agreement that certain words should be inserted, or omitted, and Mr. Bruce Thomas is trying to meet you, as far as I understand, but that is a matter between yourselves as far as I am concerned at present, because you do not seem to be *ad idem* as to what you want to produce.

Mr. Bruce Thomas: Might I make this suggestion, delete "subject to these Conditions," because frankly they seem to be nonsense, and put in after the word "cause" at the top of page 9 "directly" that is what my friend, I believe, is really anxious about. I have to prove that it was directly caused by insufficient packing, and I agree to that. It will then read: "Loss, damage or delay proved by the Company to have been caused directly by or to have arisen directly from"—put it in in two places; I believe that would really meet him.

Mr. Abady: In view of what the learned Chairman says, it does not seem to be quite within the bounds of propriety to continue this discussion now, but I thought it was clearly understood, and my instructions were, that whatever proof you might be put to under 16 that was subject to the proviso in Condition 3. I am not prepared to assent to any alteration in the words now.

Mr. Bruce Thomas: I think my friend and I could almost undertake to agree to it.

President: I think you had better try, if you do not mind.

Mr. Monier-Williams: Perhaps I ought to mention it the question of these words is going to be discussed, but Condition 14 may be affected if "subject to these conditions" is removed.

President: You are quite right to bring anything to our notice.

Mr. Monier-Williams: That is the only thing. If "subject to these Conditions" is removed from 16 it may have the effect of altering the situation under Condition 14, because "subject to these Conditions" does bring within the purview of Condition 16 some of the contents of Condition 14; that is why I imagine those words were put in.

President: In one the structure might be gone, and in the other it might be threatened.

Mr. Monier-Williams: That has to be considered, Sir.

President: I do not know sufficient about it to express an opinion on that.

Mr. Bruce Thomas: I think if the Court has had our contention on (*a*) and (*b*) that is really the point of difference, and I think we must arrange the other matter. I do not think there will be any difficulty about it.

Mr. Clements: As you said just now it was desirable to draw your attention to any point that occurred to one, there does seem to me here to be some danger that Condition 4 as regards delay may be jeopardised by Condition 16. Condition 4 seems to render the railway company liable for any kind of delay upon proof by the trader unless the company can prove that such delay has arisen without negligence, but when you get to Condition 16, in paragraph (*c*), you get a reference to delay there. "The company shall not be liable for delay proved by them to have been caused by or to have arisen from." I am only wondering whether it minimises what appears to be the full liability put upon the railway company by Condition 4.

Mr. Bruce Thomas: Of course it does; that is the intention of the words "subject to these Conditions" in the first line of 4.

Mr. Clements: There we get again "subject to these Conditions." Of course, after what you have said on that point, I have nothing further to say except this, perhaps: if those words are left in, and a question of construction arises, a great deal seems to me to turn on whether the document is to be construed as in effect a Statute, or whether it is to be construed, as it were, as a contract. It is a point of difficulty and doubt, but if my friends are going to settle the matter between them this will be disposed of; but I should ask them to take into consideration, as I believe my friend, Mr. Abady, intends to do, Condition 4 as well as the other two.

Mr. Abady: Yes, I said Condition 4.

President: Would this be a convenient way: that we pass Condition 16 (*a*) and (*b*), and also, subject to any draft amendment that is agreed between you, the remainder of the Condition?

Mr. Bruce Thomas: Yes, and if we cannot agree——

President: If you cannot agree we will have to settle it.

Mr. Abady: The heavy type remains; is that what I understand your decision to be?

President: Yes.

Mr. Bruce Thomas: I was proposing to go straight on omitting 17, but my friend, Mr. Abady, tells me that on New Condition "j," which is on page 11, he has a witness from the country, and he wishes that he should be able to get away to-day, so, with your permission, we will take the New Condition "j."

President: Very well.

Mr. Frederick John Craven, sworn.

Examined by Mr. Abady.

977. Are you here as a representative of the Agricultural Engineers' Association?—Yes.

978. Is it the fact that some of the goods in the transit of which you are interested require special packing devices in order to ensure their safety?—It is so, yes.

979. See if I am putting it correctly, because I do not want to lead you: I believe you are apprehensive that because the words "inclusive of packing" are put in Condition 1 some alteration may be made in the established practice which obtains with reference to the kind of packing devices used for your merchandise; is that it?—Packing used for the protection of the load in transit.

980. Is that what your difficulty is?—That is our difficulty, yes.

981. Are you now subject to any packing regulations issued by the railway company?—No. There are no regulations governing the provision of packing for the safety of the load.

982. What kind of provisions are made for ensuring safety?—There has been a long-standing custom that a large number of the traders have provided this special packing for the safety of the load, mostly loads made up in private sidings, and the packing has been taken with a paid-on charge by the railway companies to be returned to the trader free of all carriage.

983. A paid-on charge means a charge that is made for the purpose of ensuring the return of the packing?—Yes.

984. It is really a book entry, although money may pass?—Yes.

985. The money is returned?—Yes.

986. There is no charge, in fact, made?—Quite so; but there are instances where the railway companies themselves provide this particular packing, using it on the private sidings of the traders as well as for goods loaded up at the stations.

987. So that in some cases the trader provides this particular packing?—Yes.

988. And in other cases the railway company provide it; is that it?—That is so.

989. What form does this special packing take; I dare say the Court would like to know that?—It takes the form of large, solid chocks which are grooved and bolted, large timber stools for taking half the weight of the engine where it is necessary to take the engine off the wheels, wedges of all descriptions and sizes, timber planks, beams, miscellaneous small wedges, and large iron nails of all descriptions.

990. Have you an illustration of some of these devices that you can put before the Court?—Yes, I have some sketches. (*Sketches handed to the Tribunal.*) Those are sketches that we use in our particular trade; there are others, of course, used by other trades.

991. The merchandise that would be the subject of the protection of these special devices goes in different classes, I suppose?—The machinery is carried at exceptional rates up to Class 3.

992. And it is weighed exclusive of these devices?—No; previously the weight has not been included in the load.

993. That is what I say; they do not charge for the weight of the packing?—No, there is no charge for the weight of this particular packing, although the traders pay for the weight of the packing of the machinery itself, the casing and the cases.

Mr. Bruce Thomas: This is too practical a matter for me, and I would like to put Mr. Pike straight into the box.

President: We only have this in our minds, whether as it is brought up by the Co-ordinating Committee they ought to have the first chance of supporting it.

Mr. Abady: It would be equally convenient to me.

Mr. Frederick John Craven, sworn.

Examined by Mr. Abady.

994. Packing in that sense; the thing that surrounds, but not the thing that supports?—Yes, not the packing used in the truck for the safety of the load.

995. Those being the circumstances, what is the precise nature of the grievance that causes you to suggest New Conditions "j"?—We have been led to believe from statements made by the railway companies that it is their intention that this protective packing shall be charged for at the machinery rates, that is to say, the rates charged on the machinery. We wish to make it quite sure if that is the intention of the railway companies.

996. And you think that this New Condition "j" would deal with that?

997. *Mr. Jepson*: It is under Condition 1 where you feel you would be hit, which prescribes that you shall put on the consignment note the weight inclusive of packing?—That is so.

Mr. Abady: That is a statutory alteration.

Mr. Jepson: I quite agree. I wanted to see whether there were any other Conditions, or are you coming to any other Conditions?

998. *Mr. Abady*: Are there any other Conditions?—No, there are no others.

999. *Mr. Jepson*: Are there any other Conditions where the word "packing" is used which you think will hit you in the same way?—No; I think that is the only one.

1000. "Packing" is used in several of the Conditions, and I was wondering how far you had considered it. The proposal that you make is, "The term 'packing' when used in these Conditions shall not include a sheet"—you have not said anything about a "sheet rope"—"nor anything which is necessary for fixing the merchandise securely in or to the truck in which it is carried." Do I understand that you have looked through these Conditions carefully and wherever the word "packing" comes there is nothing else which will affect you?—Nothing beyond the articles which we have just mentioned—sheets and ropes.

1001. You have not told us anything about the sheets?—No.

1002. *Mr. Lockett*: There is no other case in these Conditions?—No other case as far as I know.

1003. *Mr. Jepson*: What do you say about the sheet?—The sheet is supplied by the railway company almost invariably together with the ropes. Those have always been supplied by the railway company and carried by them free, of course. They do not enter into the weight of the load.

1004. That does apply particularly to your agricultural engines; that would apply generally, would it not?—Yes, sheeting and ropes would come into service terminals.

1005. You are speaking now of Condition 1 which would be of general application, that the sheet and rope used for covering a truck would not be treated as part of the package and charged for in the weight of the consignment?—I quite agree.

1006. Do you think it is necessary, whatever may be the substance of your objection with regard to the chocks of wood and timbers which are used to steady and fix the load in a truck, to provide for the sheet and the ropes that cover the truck?—No, I do not; I think they should be outside the arrangements with regard to loading and packing.

1007. *Mr. Abady*: In some cases would not sheets be wrapped round the machinery, or whatever it might be, to fasten it to the corner of a truck?—It is not

usual in our trade. We provide mostly our own sheets, and the machinery being cased in closed packed cases it is not usual to sheet them at all.

Mr. Locket: If this only applies to Condition 1, if it is accepted, would it not better come as a rider to Condition 1 rather than a separate Condition which might apply to all the others?

Mr. Abady: It comes into 2, does it not?

Mr. Locket: I thought we were told just now that it only applied to Condition 1; Mr. Jepson asked the witness.

Mr. Abady: If you look at Condition 2 (*e*) you will see: "The actual weight, or where this is not practicable, the approximate weight, of the merchandise inclusive of packing."

Mr. Jepson: Well, the same point does arise under Condition 2, sub-section (*e*), as to what is meant by "packing."

Mr. Abady: Of course, my submission on that is that the necessity of including the words in Condition 2 is to enable them to make the charge.

Mr. Jepson: Quite, but the same argument applies.

Mr. Abady: Yes.

1008. *Mr. Jepson*: When you said just now that occasionally you use your own sheets for wrapping round the piece of machinery; for instance, if that sheet is put round the machinery by you and made fast so as to keep the machine free from damage by water, quite irrespective of any sheeting that the railway companies do, do you say that you should pay for the carriage of the sheet?—No. In that case the sheet is weighed with the engine; that is a protective packing of our own for our own purposes. That is included in the weight of the engine in the same way that casing is included where the engines are cased. Some engines are sent away sheeted only; other engines are sent away cased in packing-cases.

1009. Does not your proposed new Conditiou really exempt in that case the sheet from the charges, because you say: "The term 'packing' when used in these Conditions shall not include a sheet."

1010. *Mr. Abady*: Would you have any objection if the words "a sheet nor," which, after all, are words of limitation, were excluded? Then it would read: "The term 'packing' when used in these Conditions shall not include anything which is necessary for fixing the merchandise securely in or to the truck in which it is carried." If a sheet was being used as being necessary for that purpose, the "anything" would include the sheet; have you any objection to that?—Not at all.

1011. I understand that you are not asking for any alteration in the existing Condition?—No; if we could make sure that there is no alteration, that is, all we should require.

1012. Could you help the Court in this way: are there any regulations extant which define what the existing Conditions in this respect are?—I am not aware of any at all.

1013. What makes you apprehensive that there is going to be any alteration?—The wording of Condition 1.

1014. Have you had any communication from any railway company, or have you seen any draft packing regulations that they propose to make?—No, I have not, but from conversations I have had, I have understood that it was the railway companies' intention that this particular packing should be included in the weight of the load, rightly or wrongly.

1015. Have you had any communication from the railway company that you could put before the Court—of course, what the policeman said is not evidence really?—No, I have no such document.

1016. I do not mean, have you any with you now, but have you had any communications?—No written communication.

1017. But it is your general impression that you have gathered from conversatiou?—That is so.

Mr. Bruce Thomas: The Court will remember how these words "inclusive of packing" came into No. 1; they are taken out of the Railways Act, the amendment of the section of the Act of 1845.

Mr. Abady: I pointed that out in a shorter way.

1018. *Mr. Jepson*: Will you turn to Condition 16, which we have been discussing, where the Condition provides that "the railway company shall not be liable for loss, damage or delay proved by the company to have been caused by or to have arisen from insufficient or improper packing." If you exclude from the word "packing" auything which is necessary for fixing the merchaudise securely in the truck, and your people are negligent in not sufficiently packing an engine or an agricultural machine in the truck, by reason of these chocks and blocks, do you suggest that the railway company should be liable?—Quite. We consider that is the liability of the railway company entirely. Their inspectors inspect each load before it leaves the siding, and the truck is not allowed to travel a yard on the siding unless it is packed sufficiently to pass their standard.

1019. That is the view you take, that because the railway company's inspector looks at this and passes it, if any accident arose through insufficient packing, although presumably there might be cases which could not be observed by an ordinary examination, yet at the same time you would hold the companies liable?—Quite.

Cross-examined by Mr. Bruce Thomas.

1020. I understaud that these chocks which are used for securing the machinery are not included in the weight, and you do not put any charge upon their weight?—That is so.

1021. Then they are brought back to you, I suppose?—Yes, a certain proportion of them.

1022. Do you pay for them coming back?—No, not carriage back.

1023. They are carried back free also?—Yes.

1024. Free outward and free back. I suppose if they are lost coming back you would not say anything about that?—We make no claim about that; we suffer that loss. I may say that my particular firm's losses approximate £200 per annum, lost packing.

1025. All you want is to be assured that there is no intention of making any alteration in the existing practice, so far as the companies go?—Quite; it would satisfy us if we have an assurance of that sort.

1026. You are not asking the Court, are you, to provide generally that where articles of this kind are put to secure traffic, in no circumstances are the railway company to charge for them?—No, I cannot see that I could do that from the point of my own Association, although there may be circumstances probably where other people would not agree.

1027. Of course, you would agree with this, that today the practice varies with different trades and in different parts of the country, does it not?—Yes, it does.

1028. As you said, it is not to be found laid down in any particular regulation?—That is so. We have instances, I might add, of members of our Association for some of whom the railway companies have over long years provided this packing themselves. The machinery has been packed on their private sidings and at the railway stations entirely by the railway company. Others have provided their own packing and kept quite a valuable stock of this packing on the premises for the purpose, although we never have agreed that the trader should be obliged to provide this or use it.

Mr. Bruce Thomas: I shall have to call Mr. Pike.

Re-examined by Mr. Abady.

1029. Do you say the packing which you do by the provision of these chocks and so on is packing which you could legally call upon the railway company to do in some cases?—Quite—in all cases.

1030. Whether the goods are loaded at a siding or at a station?—Yes.

1031. They would very rarely be loaded at a station?—We consider our obligation is at an end when we have loaded the traffic on to the truck.

1032. And provided you do that it is for the railway company, if they accept the traffic, to take such means as they may be advised in order that it may travel safely; is that right?—That is so.

1033. In carrying out this arrangement, which you have admitted prevails in certain parts of the country and in certain trades, you have to go to considerable expense both in providing these blocks and so on and in the labour of applying them; is that right?—It is.

1034. Where you supply them, do you always do the setting up on the truck yourself?—Yes; we usually provide the blocks and drop the machinery on to them. After loading the machinery on to the trucks the planks and wedges are afterwards put on by our men.

1035. You would do the loading yourselves?—Yes.

1036. Are there no cases where the railway company do the loading at the siding?—A number of cases.

1037. And in those cases where the railway companies do the loading, would you still provide the chocks and so on?—It all depends; the practice alters in various parts of the country.

1038. Mr. Pike suggests that I am going astray when I am referring to private sidings. You are referring to traffic which does not go from private sidings?—Most of the traffic will go from private sidings.

1039. Where the railway companies do the loading?—Where they do the chocking. They do the chocking on private sidings as well as at the stations.

1040. Mr. Bruce Thomas put this to you, that you are not asking the Court to say that in no circumstances can the company make a charge. What you are asking, is it not, is that in cases where they do not make a charge now they shall not make a charge?—Quite so.

1041. Why is it that in some parts of the country they make a charge and in other parts they do not?—It is a practice which has grown up in different parts. I cannot say why, I am sure. It is a practice which has grown up over many years.

1042. Does the practice follow only as regards making a charge, or does it extend to the actual carrying out of the work. Does that vary?—Yes. In some cases the railway company will not allow the trader to do the work; in other cases they expect him to do it.

1043. Could we go as far as this, that where in fact the trader provides the chocking and does the work the railway companies do not make a charge?—Yes.

1044. Is that invariable?—Yes.

1045. Is that where the distinction comes in?—Yes.

1046. Therefore the condition you have got would be apt to express a continuation of what has happened?—Yes, quite so.

(*The Witness withdrew.*)

Mr. Joel Andrew, sworn.

Examined by Mr. Abady.

1047. Are you a representative of the Sheffield Chamber of Commerce?—I am.

1048. Were you in Court just now when Mr. Craven gave his evidence?—I was.

1049. Do you agree with it, generally?—Generally I do.

1050. What is the packing referred to in the proposed new Condition used for?—The packing referred to in the proposed new Condition as referred to on page 11? "The term 'packing' when used in these Conditions shall not include a sheet nor anything which is necessary for fixing," etc.

1051. That does not refer to the actual packing of the goods themselves?—No.

1052. Do the railway companies supply a certain amount of packing for the kind of traffic you are referring to?—Yes, they do. That is, at their own stations, and also at their sidings, too; that is to say, firms who have sidings—they do provide a certain amount of packing.

1053. When they do that do they show the value of the timber, and so on, on the consignment note?—I do not know what they show on the consignment note. That may be done by what they call the siding man who receives the note from the sender, and in labelling the wagon he may put on the consignment note, or invoice, a certain amount of packing which may be sent on to the receiving station.

1054. But when the trader supplies the supplementary chocks, and so on, does he show on the consignment note the approximate value?—Yes, in some cases, with a view of ensuring the return to him of the packing.

Mr. Abady: I think you want to deal with another question——

1055. *Mr. Jepson*: Before you come to that, let us understand about these things used for packing. You say when the railway companies supply them they enter up something on the consignment note for the purpose of a charge being made to the receiving station?—Yes.

1056. Do you mean in that case that it is anything more than a debit from one station to another of the value of these things being used always being the company's property, or is it a charge made to the consignor or the consignee for the carriage of those goods?—No; it is only a charge made upon the invoice from one company to another company so that the receiving company may return that packing and get a credit for it from the sending company.

1057. It is a debit, like for a sheet, and so on?—Yes.

1058. There is no charge to the consignor or consignee for the actual carriage of these chocks and blocks?—None whatever that I am aware of.

1059. When the railway companies supply them?—No, none whatever that I am aware of.

1060. The last Witness seemed to imply that when the railway companies did supply them they charged for them, but when the traders supplied them no charge was made. I understood no charge was made for carriage?—I should say he was only referring to the charge made upon the invoice so that the packing might be returned to the sending station.

1061. A debit from one company to another?—Yes.

1062. *Mr. Abady*: You put in my hand six photographs. I will hand them to you, and it might help the Court if you would take them up to the President and explain anything he wants to know. (*Same handed.*) They are six photographs which illustrate the class of consignment you have in mind with the particular kind of chocks and packing devices?—I would not like to go so far as to say "the class of traffic I have in mind"; but I have seen similar traffic to this loaded, and for which packing has been used, upon which the railway company do not make any charge to the sender when this particular packing is supplied.

1063. Those photographs are illustrative of the class of packing devised?—That is so.

1064. Would you let the Court see them?—(*The Witness handed the photographs to the Members of the Court, and explained them*).

Mr. Abady: Has the Witness explained the kind of procedure?

President: Yes.

1065. *Mr. Abady (to the Witness)*: Is there anything you want to add?—No, I do not think so, thank you.

1065a. I think you have some tables showing the cost. I do not think they carry the matter very far, do they?—I do not think they do, except——

1066. It is obvious that if you have a lot of traffic of this nature, and have to supply a lot of chocks, and so on, it must cost a considerable amount?—Yes; the cost of supplying these things is a considerable item, and it does not follow that the whole of the scotches will be returned to you; but it is only a small percentage that are not returned, 5 per cent. or 10 per cent. or 15 per cent., which does not matter; as a rule the sender does not worry about that. If he gets anything like a fair proportion of the timber used in packing returned to him he does not trouble about the balance.

1067. If the railway companies gave an undertaking that they did not propose to alter the present practice, is that what you want? You want to be assured that there will be no alteration?—Yes; I should want that assurance; then I should be perfectly satisfied.

Mr. Bruce Thomas: I will see what Mr. Pike can do in that way.

1068. *Mr. Locket*: This mainly applies to heavy and bulky articles carried at special rates, does it not?—Not always, but in some cases. You may have some machinery which is carried at the third-class, ordinary, rate; that would be what we call a standard rate at the present time; therefore it applies to that one.

1069. This you have shown us—nearly all of that would probably be?—Some are machinery.

1070. If they are those big, bulky things?—In some cases they are charged at exceptional rates, but not always.

1071. *Mr. Jepson*: Do you take the same view that the last Witness took that the duty of securing all these things for being properly carried is a duty which devolves upon the railway company, and in supplying these chocks and blocks for making these large engines and pieces of machinery secure in the trucks is work which you are doing but which ought really to be done by the railway company?—We have sidings, and I may say that all the material we despatch from those sidings we properly secure as far as we possibly can. But I say it is the duty of the railway companies to see when that traffic is handed over to them at our sidings that it is fit for safe travelling from the particular sidings to its destination, wherever that may be; and if it is not properly secured or protected, then the railway company should draw our attention to it so that we may look into it and, if necessary, put in additional packing or scotching for the safe transit of that particular consignment to its destination.

1072. Do they ever take that course, or does the Inspector come down and see the operation of packing going on?—The Inspector comes down when we have anything of an exceptional nature to load; but as a genural rule, not. I should say that occasionally it does happen, when we have handed the traffic over to the railway company, that before it has got away from Sheffield they have drawn our attention to it that it is not fit for travelling and have returned it to us. It is not often that that happens. In the majority of cases we find that that has been due to the rough shuutiug on the part of the railway companies.

1073. *Mr. Abady*: The practice about which we have been talking does not relate only to machinery which comes in the exceptional class by reason of exceptional weight in proportion to bulk, or *vice versa*, does it?—No.

1074. Agricultural machinery requires checking, does it not?—I cauuot say the whole, because I know very little about it; but we will take, for instance, our own traffic——

1075. That is all I wanted. As regards the actual working of the details, seeing that you start off safely as between your own employees and the railway company, you do not experience any difficulty in that direction?—No.

1076. The arrangements go on amicably?—Yes.

1077. It is a question whether a charge might be made where a charge is not made at the present time?—Yes; that is what I am apprehensive about.

(*The Witness withdrew*).

Mr. Abady: I thiuk you have the contentiou before you, Sir. I do not think I need occupy any further time over the matter. It is a technical matter, really.

Mr. Bruce Thomas: I will put Mr. Pike into the box at once.

Mr. John Pike, recalled.

Examined by Mr. Tylor.

1078. Will you tell the Court what your objection is to this new Condition ("j")?—The objection that we see to it is this: That whilst we are quite prepared to go on carrying these scotches, and other fixtures of that sort, which are now used, without making a charge, we are afraid that the inclusion of a Condition like this would enable a trader to escape paying for a packing case which he should pay for, because he would be enabled to build up in the wagon a packing case, and, in fact, we should be carrying a good deal greater weight of packing that would fall under this than we should of the article itself.

1079. So that although you have no intention, as you know at present, of making any change in the existing practice, you want to protect yourselves from being called upon to carry undue weight in that way?—Yes; that is our sole objection.

1080. *Mr. Locket*: Are you prepared to give the traders affected an unqualified assurance that you are not proposing to interfere with their present privileges?—I do not think I could bind the companies for all time.

1081. I am not asking for all time.—We have no present intention of making any alteration; and I have taken the opportunity of getting that confirmed by the Chairman of the Goods Managers Conference. Neither of us kuows anything at all of any intention of altering the existing practice.

Mr. Locket: Does that satisfy your clients, Mr. Abady?

Mr. Abady: I think it goes a very considerable way. The only thing is that I do not see how an undertaking like that could afterwards be referred to if the claim were made. That is the difficulty I am rather in. If a communication could be made from the Railway Clearing House, or anything of that kind—I am not impugning anyoue's good faith; far be it from me to do so.

Mr. Locket: It seems to me you would have ample opportunities at some future time, if you required to do so, to draw our attention to it if an undertaking of this sort had not been kept.

Mr. Abady: If it came before you.

Mr. Locket: It might be brought up at various times before us.

Mr. Abady: Yes. But might it not be brought up in the way that the railway company make a charge and trader objects to pay, and the railway company sues the trader in the county court?

Mr. Locket: It might be brought up at the annual review of rates, and so on; and that sort of thing.

Mr. Abady: I am not suggesting for a moment that the railway companies would through a witness give an undertaking and then run away from it. The only point is that if the undertaking were in such a form how could it be referred to?

President: Look at this gentleman here taking down every word.

Mr. Abady: Could that be referred to.

President: I think so.

Mr. Abady: It could, before you?

Mr. Locket: Yes, at our annual review of charges. Would you consult your clients and see whether they are not satisfied with an assurance of this sort?

Mr. Abady: They say, Yes.

Mr. Locket: It seems rather a strong proposition to put a Condition of this sort into the General Conditions, because it might be interpreted far more extensively than has been put before us to-day.

Mr. Abady: That was the intention of the proposal.

Mr. Locket: No; that we quite understand.

Mr. Clements: The National Federation of Iron and Steel Manufacturers, who are much interested in this, are satisfied with that assurance.

President: On Mr. Pike's undertaking, being given as stated and recorded, you are willing to withdraw that?

Mr. Abady: If you please, Sir.

Mr. Bruce Thomas: Condition is not to be taken to-day; I do not think it is any good starting Condition 18 now, or Condition 20. Condition 21 might, perhaps, be disposed of. I think Mr. Bradley withdrew his objection to that, if you remember. A discussion took place between Mr. Bradley and Mr. Jepson upon it, and I think it was withdrawn.

President: Yes; I have a note that it is withdrawn.

Mr. Bruce Thomas: With regard to Condition 19 in the deposited book. It is agreed that should be deleted as the classification deals with the matter; and a part of the agreement was that the company undertook to state before the Tribunal that there is no present intention of altering any existing practice under which an allowance is made to a trader for wastage in transit. If at any future time the companies propose to alter the practice in relation to such allowances, they would be prepared to refer the matter to the Tribunal in the event of opposition on the part of traders to an alteration. So in accordance with that undertaking I may be taken to have made that statement.

Will you pass to Condition 21—Paid-on charges. I do not know whether the Aberdeen Chamber of Commerce are objecting to it. It is agreed with the Co-ordinating Committee, and no one else seems to object.

Condition 23. There is no objection there. That is agreed.

Condition 24 is agreed. Condition 25 is agreed.

New Condition ("h"), put forward by the Co-ordinating Committee, is agreed by the railway companies.

New Condition ("k"), also brought forward by the Co-ordinating Committee, is agreed by the railway companies.

That leaves only Conditions 17, 18, and 20; and there are a few matters, not many, that require to be picked up. We have to try and agree with the Co-ordinating Committee some sort of satisfactory statement with regard to the giving of a receipt, for instance. By the time we met again we shall have had an opportunity of considering all those matters. And also with regard to Condition 8. We shall have ample opportunity of doing that.

President: Does that conclude the business before us to-day, Mr. Bruce Thomas?

Mr. Bruce Thomas: That is so, Sir.

Mr. Monier-Williams: There is one suggestion which I might make, arising rather out of the undertakings given by the railway companies in the last proposed new Conditions. Would it be possible to have any notes inserted on these Conditions, when finally agreed, referring to the proceedings that are now taking place before this Tribunal? I will tell you what is in my mind. These Conditions are going to be settled once and for all, subject to any alterations that may later be put forward. They will last at any rate for a considerable time.

President: Till both you and I are older.

Mr. Monier-Williams: When, perhaps, we are gone altogether. The traders who are dealing with these Conditions may not be in a position to know, and probably will not be in a position to know, what has taken place before this Tribunal.

President: Someone will produce a dog's-eared volume of the proceedings, and that would help you.

Mr. Monier-Williams: It might or might not. The people concerned may be in another part of the country and might not have heard of these particular proceedings. I have been instructed to make the suggestion—where these undertakings have been given and accepted—whether it might be possible to put either a marginal note, or foot note, on these Conditions as finally settled, giving a reference to that part of the proceedings in which the matter was discussed and the undertaking given, so that anyone who saw the foot note would be put on inquiry.

President: This would quite usefully occupy anyone's time, but I should not make it an official publication.

Mr. Monier-Williams: I was instructed to make the suggestion as a possible way of getting out of the difficulty.

Mr. Locket: It might be worth while drawing the attention of the author of this book here to it.

Mr. Monier-Williams: Yes, for the next edition. That might be a way out of the difficulty.

(*Adjourned till further notice.*)